From: Sandra Williams AOL Mail
To: *TE/GE-EO-F990-Revision;
Subject: Comments on Form 990 Instructions
Date: Tuesday, May 20, 2008 8:56:13 AM
Attachments: Inkind Questions.doc

See Attached Word File *Inkind Questions.doc*

Comments on 2008 Instructions for Form 990

Thank you for the opportunity to review and comment on IRS's proposed new Form 990 instructions. The general area of Inkind Donations that are to be tracked and reported on the Form 990, Form 990EZ & Schedule A (for computation of the % public support) is still very confusing to me. I think that the best way to convey where the confusion lies is to give you specific examples.

The organization I prepare the tax return for's ***Monetary contributions, gifts, grants & similar amounts totaled $26,213 in 2007***. Tracked inkind of various types accounted for another **$15,630** in revenue reported. Most of the inkinds represented relatively low valued items like:

Note: the organization owns & maintains a house on the National Historical Register

(1) Items & services contributed for sale at silent auctions.
(2) Baked and food for bake sales and various meal related fundraisers.
(3) Food & fresh floral arrangements, door prizes for luncheons, dinners, coffees, and other socials held for members and their guests through out the year (related to our program services offered.)
(4) Basic house supplies: toilet paper, trash bags, dish towels, dishes, serving trays, flat ware, tools, paint, storage containers, yard chemicals etc.
(5) Basic office supplies: printer paper, copy paper, staples, file folders, computer supplies, printers, computer components and software, calendar books, phone accessories, pens, pencils, cash bags, postage, etc.
(6) Furniture, appliance (small & large), pictures, components, house decorations, etc.
(7) Various marketing items: brochures, business cards, posters, signs, etc.
(8) Formal attire for our Cinderella Project: prom dresses, shoes, purses, jewelry.
(9) Donor paid printing, house repair & maintenance bills., etc.

For Yr. 2007, $8974 of these type inkinds were supplied by Qualified Contributors and $6,656 were supplied by Disqualified Contributors (most of which came from Officers, Directors, & Trustees) so the amount of the organization's operating expenses subsidized with these type donations is relatively significant to it's total operating expense.

Which of the above inkind items are we suppose to track and report on which form? Which are considered *unreimbursed expenses of officers, employees or volunteers and to be ignored?* Is there a value amount breakpoint to distinguish between inclusion and exclusion on the forms? Is the distinguishing factor how and where the item is used? Is the distinguishing factor the expected life of the inkind donation? Or is the distinguishing factor whether or not the donor includes the donation on his or her form 1040 Schedule A as an itemized deduction?

Another question I still get confused by is when a Donor who becomes disqualified because of a large contribution (i.e.$5000 or more in a single year) change from qualified to disqualified for reporting purposes on Form s 990 and 990-EZ Schedule A? The year the gift is received? The year following the year the donor exceeded the $5000 threshold?

Comments on 2008 Instructions for Form 990

In additions to enhancements in the 2008 instruction booklet, I would appreciate some more timely direct feedback relative to my questions/confusions via reply email.

Sandra Williams

From: Chris Vest
To: *TE/GE-EO-F990-Revision;
cc: Jim Clarke; Robert Hay, Jr.;
Subject: ASAE Comments on Form 990 Instructions
Date: Wednesday, May 21, 2008 10:29:56 AM
Attachments: 990 INSTRUCTIONS Comments 05.21.08.doc

Hello, attached are comments from the American Society of Association Executives (ASAE) on the draft instructions for Form 990. Please contact our Public Policy department with any questions at 202-626-2703. Thank you.

Chris Vest
Director, Public Policy
ASAE
1575 I St. NW
Washington, DC 20005
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Fax: 202.220.6468
E-mail:
www.asaecenter.org

May 21, 2008

Lois G. Lerner
Director of the Exempt Organizations Division of the IRS

Ronald J. Schultz
Senior Technical Advisor to the Commissioner of TE/GE

Catherine E. Livingston
Deputy Associate Chief Counsel (Exempt Organizations)

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Ave., NW.
Washington, DC 20224

Dear Ms. Lerner, Mr. Schultz, and Ms. Livingston:

In our capacity as the leading voice for the association management profession, the American Society of Association Executives (ASAE), Washington, DC, respectfully responds to your request of April 15, 2008 by submitting the following comments on the draft instructions to the recently-revised Form 990 and accompanying schedules.

ASAE is a section 501(c)(6) individual membership organization of more than 22,000 association executives and industry partners, representing nearly 12,000 tax-exempt organizations. Its members manage leading trade associations, individual membership societies, and voluntary organizations across the United States and in 50 countries around the globe. We advocate for voluntary organizations so that they may continue to improve the quality of life in the United States.

First, we commend you on your monumental and comprehensive efforts to modernize the Form 990 and its instructions. Second, we reiterate what we indicated in our meeting with you on February 4: that we greatly appreciate the Service's adoption, in the final Form 990 for 2008, of many of the changes that were recommended by ASAE and other industry groups during last summer's comment period. We are pleased that the draft Form 990 instructions released on April 15 present a reasonable and workable definition of an

"independent" member of an organization's Board of Directors -- one that is broad enough to effectively encompass the relationship between a membership organization and its members. Moreover, we thank you for your clarifications with regard to the treatment of the compensation of executive directors and other staff employed by an association management company (AMC), and disclosure of such on the new Form 990.

COMMENT: "KEY EMPLOYEE" DEFINITION

With regard to the draft instructions, ASAE continues to have serious concerns regarding the expanded definition of "key employee," especially with regard to its application to membership organizations and business leagues. The definition that was initially offered last year -- that of a person with "responsibilities, powers, or influence like those of officers, directors, or trustees, including a person who manages a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income, or expense of the organization" -- has been modified and narrowed somewhat in the recently-released instruction draft:

> . . . a key employee is an employee of the organization (other than an officer, director, or trustee) who has responsibilities, powers or influence over the organization as a whole that is similar to those of officers, directors, or trustees; (2) *manages a discrete segment or activity* of the organization that represents *5% or more of the activities, assets, income, or expenses of the organization*, as compared to the organization as a whole; or (3) *has or shares authority to control or determine 5% or more of the organization's capital expenditures, operating budget, or compensation for employees*. . . [e]xclude any person whose reportable compensation from the organization and related organizations does not exceed $150,000.[1] [emphasis added]

Nevertheless, ASAE feels that the draft definition is still much too broad. We note that the only examples presented in this section of the instruction draft relate solely to universities and health care systems, both of which are worlds apart from the usual charitable or membership organization. It is difficult for a membership organization, even a fairly large and complex one, to see parallels between its own operations and that of a large, multi-departmental university.

ASAE has specific concerns with the following portions of the overall "key employee" definition:

- *Discrete segment or activity*. Because of its mission and unique position in the association world, ASAE knows that membership associations operate differently than do universities or other large system organizations. Unlike those larger, more complex organizations, membership associations generally lack *discrete* departments, segments or activities. Departments tend to be somewhat smaller, and those employees who head them do not have nearly the same degree of

[1] 2008 Form 990 Glossary - Draft, pp 13-14.

autonomy as, for example, the head of a university's law school, with regard to budget, revenues, or expenditures. Oftentimes, programs and departments overlap, with one department functioning as support for one or more programs, with no one "department head" in control of any one program or activity.

Furthermore, the term "manage," as used in the draft definition, appears to equal "control." Management of a program does not, in our experience, confer significant autonomy or control over that program.

- *The 5% threshold*. While we appreciate IRS attempts to establish a reporting cap or threshold for key employees, and feel that the $150,000 reporting "floor" is a good start, the suggestion that significant or substantial "control" or "authority" begins at a 5% level is a considerable stretch. There are numerous tax-related examples of "significant" or "substantial," and none of them approach a 5% level. For example:

    - One definition of a "business relationship," per the draft Form 990 Glossary, involves persons known as "greater-than-35% owners." (This definition also tries to equate 35% owners with 5% key employees, which makes no sense at all.)
    - The "business relationship" definition also includes two persons who are both greater than 10% owners in the same business or investment entity.
    - "Control" within the meaning of section 512(b)(13) requires a majority ownership; *i.e.*, more than 50%.
    - Unrelated use of leveraged property is not considered significant unless it exceeds 15%.

  From our analysis, it appears that the 5% threshold for "key employee" has been borrowed from the top-heavy benefit plan rules of section 416. Under section 416(i)(1)(A), a "key employee" is defined as a "more than 5% owner of the employer." Use of this definition in the not-for-profit arena implies that a 5% owner and a non-owner employee who "manages" 5% of an exempt organization are somehow equivalent "key employees." We strongly disagree. An owner and an employee -- especially an at-will employee with no employment contract -- cannot be said to exercise the same degree of control as an owner, even in a for-profit context. Furthermore, the section 416 rules make no mention of mere "control" over assets, expenses, or revenues by non-owner employees for top-heavy plan purposes. Accordingly, it is difficult to see how the section 416 "key employee" definition can be applied for control purposes, in a non-owner, not-for-profit scenario.

  Ideally, ASAE would like to see the IRS revert to the "key employee" definition as set forth in the 2007 Form 990 instructions: "any person having responsibilities, powers or influence similar to those of officers, directors, or trustees. The term includes the chief management and administrative officials of an organization . . .[for example] a chief financial officer and the officer in charge

of the administration or program operations are both key employees if they have the authority to control the organization's activities, finances, or both." ASAE interprets this definition as excluding department heads, as they have insufficient authority to "control" an organization's activities or finances -- especially a less structured membership organization -- and so do not have powers or influence "similar to those of officers, directors or trustees."

In the alternative, if the IRS is determined to expand the "key employee" definition beyond the current one, ASAE suggests raising the "control" percentage to well above 5%, and formulating a tighter control standard than "management" of revenues, assets, or expenditures. We also suggest that the expanded "key employee" positions (those beyond the CEO, CFO and COO) be reported by title only - rather than by name and title – or redacted on public disclosure

- *Former key employees*. As previously stated, we appreciate the establishment of the $150,000 reporting "floor" for key employees. However, we note that former key employees must be reported if their compensation was $100,000 or more. It would make more sense if the "former" key employee reporting threshold were brought up to $150,000, to agree with the current key employee reporting threshold.

COMMENT: OTHER ISSUES

- *Form 990-EZ.* According to Page 8 of the draft general instructions, a controlling organization (within the meaning of section 512(b)(13)) must file the full Form 990, rather than Form 990-EZ, if (a) it is required to file a 990 at all, and (b) if there was any transfer of funds between the controlling organization and any controlled entity during the year. This requirement is unnecessarily harsh, especially with regard to tax-exempt "controlled" organizations. It is not uncommon for section 501(c)(6) trade associations to control, within the meaning of section 512(b)(13), a related charitable foundation. Furthermore, it is typical that a related foundation would regularly transfer funds to its "parent," in the form of charitable contributions, reimbursements for office space and services, etc. Likewise, the "parent" association might make charitable contributions to its controlled foundation. Requiring a Form 990 under these circumstances will impose undue hardship on small associations that might otherwise be able to file Form 990-EZ, either during the three-year transitional period, or indefinitely. We suggest that, at a minimum, controlling organizations with related tax-exempt foundations be permitted to file Form 990-EZ, if they otherwise qualify to do so, but also be required to file Schedule R, "Related Organizations and Unrelated Partnerships."[2]

[2] Ideally, this would entail changing the parenthetical instruction on Page 3, Line 45 of Form 990-EZ. However, for 2008, a reference in the Form 990 and 990-EZ instructions should be sufficient, similar to the one that currently exists in the draft Part VII instructions regarding minimum dollar reporting requirements for "key employees."

- *Core Form, Part IV, Line 3*. The instructions for Part IV, Line 3 do not clearly indicate what constitutes "indirect" political activity, other than to note that it includes activities conducted through a disregarded entity or a joint venture or other arrangement taxed as a partnership. The instruction is silent as to whether "indirectly" also includes organizations, such as section 501(c)(6) trade associations, that have a Separate Segregated Fund (SSF) or Political Action Committee (PAC) under IRC section 527(f)(3). While we presume that "indirectly" does include organizations with SSFs and PACs, because (a) the reporting requirements of Schedule C include transfers to SSFs, and (b) Line 3 is the only question for which a "yes" answer would require a non-lobbying organization with an SSF or PAC to file Schedule C, we believe this instruction should be clarified.

- *Core Form, Part VI, Line 9a.* This instruction needs to be clarified regarding "legal authority to exercise supervision and control" of chapters. Chapter affiliation agreements vary widely, especially amongst non-charitable membership organizations. It might be useful for the instruction to specify when an organization with chapters, units or other affiliates would *not* answer this question affirmatively. For example: in some instances, "local units that are not separate legal entities" may actually be mere divisions of a central organization, and not separate, unincorporated affiliates at all. In such case, the affiliates' financial information would be included in the central organization's Form 990 (which would not be a group return), and the answer to the question would best be answered "no," with perhaps an explanatory note in Schedule O.

- *Core Form, Part VI, Line 10.* The instructions for this line are unnecessarily restrictive in requiring pre-filing dissemination to an organization's entire board. In practice, whole-board review and approval can be cumbersome, especially when the board is composed of many members. We recommend that an affirmative answer be permitted when an organization's Form 990 is provided to, and reviewed by, an appropriate subset of the board -- the finance committee, the audit committee, or some other specially-designated committee. We further recommend that an organization be permitted to answer "yes" if a substantially-correct *draft* Form 990 is provided to the reviewing committee before filing.

- *Schedule C, Line 1*. The instructions for Line 1 are confusing with regard to reporting for organizations with separate segregated funds (SSFs). In the first paragraph ("Note"), a section 501(c) organization with an SSF is instructed to "report transfers to the funds in Parts I-A and I-C." However, the next paragraph under Line 1 indicates that a section 501(c) organization collecting "political contributions or member dues earmarked for a separate segregated fund, [which] promptly and directly transfers them to that fund as prescribed in Regulations section 1.527-6(e) . . ." should *not* report those transfers in Part I-A. Accordingly, it is not clear what a 501(c) with an SSF is to do: does it report transfers in Part I-A only if it fails to correctly transfer funds in accordance with the Regulations? If

this is the case, it is highly likely that many organizations will incorrectly report properly-made SSF transfers in Part I-A.

We recommend that the instructions for this section be revised to provide that either all SSF transfers be reported in Part I-A (with clarifying details presumably to be provided in Part I-C), or that *no* SSF transfers be report in Part I-A.

- *Schedule F, Part I, Line 3, Columns (d) and (e)*. It appears that only four activities may be listed in this section: (a) grant making, (b) fundraising, (c) program services, and (d) unrelated trade or business activities. It is unclear, from the instructions and the heading of Column (d), whether unrelated trade or business activities are considered a type of program service, or a separate category entirely. It is also not clear whether a passive investment, as referenced in Page 2 of the instructions, would be considered a separate list-able activity. It would be helpful for this line's instructions to clarify the exact types of activities to be included, and whether the type of unrelated trade or business activity needs to be detailed in Column (e).

*** * * * ***

Once again, ASAE applauds the Internal Revenue Service's efforts in redesigning the Form 990 to meet today's not-for-profit reporting requirements. ASAE believes that transparency, compliance, and reduced regulatory burdens benefit both nonprofit organizations and the communities they serve. As always, we offer our full assistance to the IRS in working toward a revised Form 990 that will accomplish these stated goals of the IRS without unintended consequences and increased burden on the filing community.

Sincerely,

John H. Graham IV, CAE
President and CEO

From: Doug White
To: *TE/GE-EO-F990-Revision;
Subject: 990 Instructions
Date: Wednesday, May 21, 2008 11:31:45 AM

To Ron Schultz
Senior Technical Advisor to the Commissioner
IRS Tax Exempt and Government Entities

Ron,

Following up after your informative presentation yesterday at B'nai B'rith and your suggestion that I send along my comments on one of the questions in the Governance section in the new 990 . . .

I'm not certain that the draft of the 990 core instructions on the IRS site are the actual instructions; as they don't go line by line I can envision some confusion, but perhaps the idea is to refer people to the schedules and the glossary. The glossary is excellent, by the way, and the schedules are a huge improvement. (You may have difficulty, however, persuading people that, as you said yesterday, the change from two to 16 schedules make the form "more complex but easier" to complete. Keep at it, though; your explanation made sense.) Overall, the 990 is a vast improvement over the old version. I like the emphasis on activities - and not only on financial aspects (but maybe you could consider improvements more frequently than every 30 years . . .).

In any event - and to my comment of yesterday - assuming the final 990 instructions are in the format as I see them now, I'd recommend that they include a statement that informs the organization that the IRS does not employ a "should" mindset for an answer to any particular question. For example, in Part VI, Section A, question #10 (one of the questions you brought up yesterday) asks if a copy of the 990 was provided to the board before it was filed. I imagine that most people are going to think that the question implies that it is a good thing to do (and I actually think it is), but you explained in detail that the IRS isn't looking for a "yes" (or a "no") response; just an accurate response. Those two things being the case - that the IRS isn't looking for a particular response and that most people will think that you are - I'd recommend that you clarify this in the instructions. (Your explanation itself at yesterday's lunch talk would provide the appropriate words to this point.) As the instructions are not a line-by-line explanation, but instead designed by general thoughts, this

might be added as one of those thoughts - perhaps as a new second bullet under Part VI of the instructions (especially as the "yes"/"no" issue also arises in the questions in Section B of "Governance, Management, and Disclosure"). This might be especially important, as the IRS acknowledges that the code does not require this information but that you're asking for it anyway. (I assume these answers will generate some data, in addition to the additional information the Tax Exempt Division will be looking for (in accordance with Steven Miller's Georgetown talk a few weeks ago), so it will be put to a good purpose, but organizations may not see it that way and so the reassurance of a question's neutrality will be all the more useful.)

Another matter, far less severe but I think important nonetheless, is to be stylistically clear. An example: Section H is entitled "Failure to File Penalties"; at first glance I thought that section was aimed at people who don't file penalties, when what you mean is to aim your remarks at those who fail to file Form 990 and therefore are penalized; the words "Failure to File" are really a multi-word adjective for "penalties." Thus, the section should be hyphenated to read, "Failure-to-File Penalties," a type of penalty - for failing to file. (That's the only example I found, but you might want to comb through just to be sure. The critique could be far worse: About 15 years ago the IRS announced that it would be printing the 1040 in Spanish, to which Conrad Teitell responded, as he was quoted in the New York Times, "That's great. Now let's hope they decide to print the form in English someday too.")

Thank you for your consideration on this point. Again, thanks also for your informative comments yesterday at the B'nai B'rith luncheon.

--
Doug White
Washington, DC
202.483.3636

www.charityontrial.com

From:	White, George
To:	*TE/GE-EO-F990-Revision;
cc:	Miller Steven T; Lerner Lois G;
	Thomas Ward L;
Subject:	990 Instructions
Date:	Wednesday, May 21, 2008 4:24:40 PM
Attachments:	Template.xls
	task force members.doc
	LETTER.5.21.08.doc

FYI.

AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

Comments on Form 990 Instructions

Developed by the
Form 990 Instructions Task Force

Marie Arrigo, Co-Chair
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George White, AICPA Technical Manager

May 21, 2008

May 21, 2008

IRS
Draft 2008 Form 990 Instructions
1111 Constitution Ave., NW.
Washington, DC 20224

Attention: SE:T:EO

RE: Instructions for Form 990, *Return of Organization Exempt from Income Tax*

Dear Sir:

The AICPA is the national, professional association of CPAs, with approximately 350,000 members, including CPAs in business and industry, public practice, government, and education; student affiliates; and international associates. Our members provide audit and tax services to thousands of not-for-profit organizations.

The attached comments were developed by our Form 990 Instructions Task Force made up practitioners who serve tax-exempt organizations and are experienced with both the nuances of the Instructions and the challenges that arise for taxpayers in applying them. The comments were approved by our Exempt Organizations Technical Resource Panel.

We look forward to working with you in the future on this matter. We stand ready to discuss and explain our comments with you at any time. If you have any questions, please contact either of the undersigned:

Sincerely,

Marie Arrigo
Co-Chair, Form 990 Instructions Task Force

Sincerely,

Jane Searing
Chair, Exempt Organizations Technical Resource Panel

cc: Steven Miller
Lois Lerner
Ward Thomas

Section of the instructions	Importance	Urgency	Comment	Recommendation
General, overall	Low	Low	It is difficult to tell, when reading through any of the draft instructions, whether any given term is defined in the accompanying Glossary, without turning to the Glossary to look.	Provide some sort of identifier for terms defined in the Glossary - perhaps a different type font, or italics, or symbol, that will immediately alert the reader to go to the Glossary for the definition. (It may also be useful, if the final instructions are available on the Web in PDF format, to hyperlink terms defined in the Glossary with their Glossary definitions.)
Highlights of general instructions	Medium	Medium	Highlights say short years ending in 2008 may use 2007 forms. Instructions don't state this	Include this option in the instructions for short periods
Highlights - 1st bullet point	High	High	Request for specific examples of accomplishments for particular subsectors of exempt organizations: Nursing homes	Nursing Home Sector: number of beds, number of allied health professionals and medical personnel, specialized facilities and treatments for the elderly
Highlights - 1st bullet point	High	High	Request for specific examples of accomplishments for particular subsectors of exempt organizations: Hospitals	Hospitals: number of licensed beds, specialties, number of Inpatients and outpatients treated. Reference to Sch H, for charity care etc.
Highlights - 1st bullet point	High	High	Request for specific examples of accomplishments for particular subsectors of exempt organizations: Colleges	Colleges: number of students full time and part time, number of of faculty, explanation of degrees offered, description of financial aid offered.
Highlights - 1st bullet point	High	High	Request for specific examples of accomplishments for particular subsectors of exempt organizations: Social Clubs	Social Clubs: number of members, offerings to members, any community programs or benefits
Highlights - 1st bullet point	High	High	Request for specific examples of accomplishments for particular subsectors of exempt organizations: Trade Associations	Trade Associations: number of members, offerings to members, description of trade shows etc.
Highlights - 2nd bullet point	Low	Low	Request for whether to rely on existing activity codes or develop new ones	Recommend new codes be adopted - suggest look to states like Massachusetts for listing of codes
General, Page 7	Low	Low	The definition of "gross receipts" does not specifically state that gross proceeds from securities and asset sales are includible in the gross receipts total. Organizations usually record in their general ledger *only* the net gain or loss from securities sales, and must dig into detail statements and documents to determine gross proceeds. Accordingly, without an explicit reminder in the instructions, they may not calculate gross receipts correctly. This is especially important, now that the Form 990 no longer includes the prior form's Line L, Gross receipts, that automatically calculated the gross receipts total.	Provide specific guidance as to the inclusion of gross proceeds from securities and asset sales.

General, Page 8	High	High	The instructions state that a controlling organization must file Form 990, rather than Form 990-EZ, if it controls one or more "controlled entities" within the meaning of section 512(b)(13), if it is required to file a 990 at all, and if there was any transfer of funds between the controlling organization and any controlled entity during the year. This requirement presents a burden for those small organizations, such as trade associations, that have an affiliated section 501(c)(3) foundation or other tax-exempt affiliate that meets the definition of a "controlled entity," as they otherwise would be permitted to file Form 990-EZ during the Form 990 transition period.	Permit small controlling organizations with tax-exempt controlled entities to file Form 990-EZ (assuming no UBIT issue), and specify that they must also file Schedule R.
General, Page 9	Low	Low	The 2007 Form 990 instructions listed 8 types of political organizations that were not required to file Form 990. The draft instructions list only 4 types. Are the other 4 types of organizations now required to file a Form 990?	Clarify, in the instructions, why the 4 types of political organizations that were left out now have to file Form 990; or if the 4 were omitted in error, restore them to the listing of political organizations that do not have to file.
General, Page 10	Low	Low	The Sequencing List indicates the order in which each section of the new Form 990 should be completed, in order, to maximize efficiency. While the overall order is logical, it may be beneficial to move completion of Part VII higher up in the list, as it would be useful in the completion of Part IX (currently part of Item 3) to know the compensation numbers for the current officers, directors, trustees, and key employees.	Move the completion of Part VII higher up the list: make it Item #3, and renumber Items 3 - 10 to 4 - 11.
Amended return section, p13	Medium	Medium	Sch O instructions ask for information on sections being amended	In the amended return section, instruct the taxpayer to complete Schedule O to list changes

Section of the instructions	Importance	Urgency	Comment	Recommendation
			No comment	

Section of the instructions	Importance	Urgency	Comment	Recommendation
Specific Instructions: line 2	High	High	New Program services must answer "Yes" if the organization undertook any new "significant" activities.	Recommend providing a definition and or examples of what is "significant"
Specific Instructions: line 3	High	High	Changes in programs must answer "Yes" if the organization made any significant changes in its program activities.	Recommend providing a definition and or examples of what is "significant"

Section of the instructions	Importance	Urgency	Comment	Recommendation
Core Form, Part IV,Line 12, and Schedule D,Parts XI,XII, and XIII	Low	Low	The instructions for Line 12 provide that an organization is to answer no if it has not received an audited financial statement prepared in accordance with GAAP for the year for which it is completing the return. There are times when a return must be filed prior to the issuance of the signed financial statements , such as when the signed financials will not be issued until after the final extended due date. Although the instructions for Line 12, and Schedule D,Parts XI, XII, and XIII, provide that organizations answering "No" may provide the reconciliations, it is not clear whether in those circumstances the answer should be "Yes" or "No".	The instructions for Part IV, Line 12 should clarify whether in the circumstances described the answer should be "Yes" or "No". We would recommend that a "Yes" answer would be appropriate.
Line 36 Transfers by charitable organizations	High	High	The instructions say that 501(c)(3) organizations must answer. The instructions should clarify that Schedule R, Part V, line 2 is only applicable and therefore needs to be completed by 501(c)((3) organizations	Adding that Schedule R, Part V line 2 is applicable for transactions with noncharitable organizations only if the reporting organization is a 501(c)(3) organization.
Line 29 Non-cash Contributions	High	High	The instructions require any organization that received during the year more than $25,000 in the value of donations, gifts, grants, or other contributions of property other than cash, regardless of whether they reported such amounts as non-cash contributions in Part VIII, Line 1g to answer "Yes" to this line.	More clarification and possibly examples would be helpful. (1) This question should be answered using the same basis as the return is being prepared (cash v. accrual). (2) Another consideration is donation of art, historical artifacts that are not recorded on the balance sheet, or assets received as an agent for another organization. Clarification should be provided as to what assets should be included. As an example, Form 8283 would be required for a donation of art. However, an appraisal of this donation would not be required by the organization. Therefore, the organization would have no basis to record the asset.

Section of the instructions	Importance	Urgency	Comment	Recommendation
			No Comment	

Section of the instructions	Importance	Urgency	Comment	Recommendation
Core Form Part VI, Line 1b	Medium	Low	A reference is made to the "large board" exception. This exception should be detailed in the instructions for the preparer.	Include a definition of a large board and what the exception is.
Part VI line 1b	High	High	#3 to be independent, the voting member must not receive "material financial benefits" from the organization or a related organization.	Need a better definition and perhaps examples to understand what constitutes a material financial benefit.
Core Form Part VI, Line 10	High	High	The instructions state that you should check "yes" if the 990, as ultimately filed, was given to "each" member of the governing body …. prior to the filing of the form…… This is a very high bar to meet. The organization should have the ability to provide the form to the board members, in draft and provide the final at filing or immediately after filing of the final form.	The instructions should state "has a process to disseminate the 990 to all members of the governing board prior to filing"
Line 2 Relationships	High	High	Second business relationship includes performance of services for compensation of greater than $5,000. There is no exception for professional services which are privileged in some way eg. Physician/patient or attorney/client	Provide an exception to the general disclosure rule that does not require disclosure of privileged relationships such as physician/patient or attorney/client.

Section of the instructions	Importance	Urgency	Comment	Recommendation
Section A, Page 1	High	High	The current draft instructions propose to put a reporting floor under compensation of key employees of $150,000 (reportable compensation). However, FORMER key employees must be listed if reportable compensation is $100,000 or more. It does not make sense to report former key employees at a lower threshold level than current key employees.	The standard for former key employees should be revised upward to $150,000, even though this contradicts Page 7 of the form itself. There is already one such correction: on Page 2 of the draft Part VII instructions, a "Caution" box indicates that the Form 990, Part VII, Page 7 notation "regardless of amount of compensation" should be ignored, and the $150,000 threshold utilized, for current key employee reporting.
Section A, Page 2	Medium	Medium	The definition of "Officer" indicates that an organization's officers "may" be determined by reference to the organization's organizing document, bylaws, or governing body resolutions. It is not clear whether the use of the word "may" indicates that an organization has the option of listing fewer officers than its organizing documents, etc. may include, as long as applicable state law is complied with.	Explicitly state, in the instructions, that those organizations that list more than the standard officer positions in their organizing documents (for example: multiple vice presidents) have the option of reporting only those officers required by state law.
Section A, Page 2	High	High	The instructions significantly expand the definition of a key employee to include anyone that manages a segment or activity of an organization representing 5% or more of the activities, assets, income, expenses, capital expenditures, operating budget or employee compensation of the organization. This definition is troublesome and burdensome, for the following reasons: • There are numerous definitions of "significance," both in the Internal Revenue Code and Regulations and in various Form instructions. Most of these definitions begin at a 15% to 25% level. Five percent is too low to invoke "significance." • The expanded definition is not consistent with Reg. §53.4958-3(e)(2)(iv) and (v), which deal with "substantial influence." Reg. §53.4958-3(e)(2)(iv) utilizes the term "substantial," whereas Reg. §53-4958-3(e)(2)(v) refers to a "discrete" segment or activity. Examples 8-11 in the §4958 regulations utilize the term "discrete" in conjunction with the term "substantial." Examples 1-4 of the draft 990 instructions are based on Examples 8-11, but assert that 5% is "substantial." However, this term is not defined in the §4958 Regulations, much less set at a 5% threshold • It appears that the 5% threshold may have been pulled from the top-heavy benefit plan rules of §416, where a "key employee" is defined as a "more than 5% owner of the employer." Using this particular definition in a not-for-profit setting implies that a 5% owner and a non-owner employee who "manages" 5% of an exempt organization are somehow equivalent, when they are not. An employee (especially an at-will employee) and an owner are simply not going to exert the same degree of control over an organization. • A 5% threshold will be particularly burdensome, as many organizations will likely face tremendous difficulties trying to obtain information on a large number of employees. The expanded requirement will entail voluminous requests to payroll, human resources, and accounts payable, and may very well significantly delay Form 990 filings. Additionally, such individuals would also have to be incorporated into disclosures about family and business relationships and conflicts of interest, further extending the reporting burden on organizations large and small.	The utilization of 5% with respect to defining discrete segment and control over capital expenditures, operating budget,or compensation of employees is not realistic, will result in an exponential increase of key employees -- especially for larger organizations -- and in many instances will blur the relative authority of those so designated as key employees under the current definition. It is our recommendation that the definition of "significant disposition" -- 25% -- as set forth in the Schedule N instructions, be utilized instead. Inasmuch as the IRS has announced that its plans for formal guidance include regulations to implement Form 990 revisions, it is our recommendation that the term "substantial" be defined as a 25% standard with respect to the term "substantial."

Section A, Page 2	High	High	Example 1 under the "key employee" definition includes "contributions from alumni and foundations" in total organization revenue, and implies that a portion of those contributions have been counted as part of the law school's revenue, thereby pushing that department over the 5% limit. It is not at all clear how donations were allocated to the law school: were only direct donations to the law school included? Were general donations allocated amongst the school's various departments?	Provide guidance as to how contributions are to be included in departmental revenue - or else stipulate that donations themselves comprise a separate department (especially if the organization has a separate fundraising department or division).
Section A, Page 2 and 3	Low	Low	The examples provided under the definition of "key employee" include a university and a hospital. In truth, the world of exempt organizations is far broader than schools and hospitals - and is also broader than charitable organizations. These other types of organizations tend to be organized differently, with smaller staffs and significantly different revenue streams.	Provide additional examples based on other organizational types: trade associations, action organizations, etc.
Section A, Page 5	Medium	Medium	The section on Group returns provides two Part VII/Schedule J reporting alternatives, in terms of a parent organization and its subordinates: parent/subordinates separately, and parent/subordinates consolidated. It is not clear, from the instructions, whether the separate reporting requirement envisions a Part VII/Schedule J for EACH subordinate (with the group 990 containing many Parts VII and Schedules J), or whether the subordinates are all included in one Part VII/Schedule J, as is the case with the consolidated reporting alternative.	Clarify the instructions for separate reporting, preferably requiring only one Part VII/Schedule J including all subordinates.
Section A, Page 5	Low	Low	The instructions do not indicate whether the reporting of "average hours per week" will allow for fractional hour reporting	Clarify the instructions, preferably allowing for fractional hours. Directors and trustees of small organizations, for example, may spend an average of less than an hour per week on organization business, and greater reporting accuracy will be achieved if fractional hours are permitted.
Section A, Pages 5 and 6	Medium	Medium	The instructions for current and former officers, directors, trustees, and key employees are confusing, with regard to which boxes should be checked, and which titles should be included.	Provide a chart that more clearly shows the checkbox and titling requirements for each type of "current" and "former" position.
Section A, Pages 5 and 6	High	High	The instructions provide that the former "five highest compensated" employees must be listed if they fell out of the top 5 for the current year, but were listed in the top 5 at any time during the prior 5 years. This is a cumbersome requirement, for this reason: unlike the listings of officers, directors, trustees, and key employees, the listing of the "5 highest compensated" employees can be significantly fluid from year to year. Differences in annual pay raises, increases in the number of employees, and expansion of program offerings can lead to significant changes in which employees are in the top 5 from year to year. Most of the time, employees falling out of the top 5 do so not because their positions or duties changed, but because their compensation did not keep pace with that of other employees, or new employees were brought in at a higher level.	Require the reporting of former "five highest paid" only if their pay and duties change due to serving in a lesser capacity, if they move to a related organization and serve in a different capacity, or if they were not an employee at all during the year, but were compensated (either by the reporting organization or a related organization) as a consultant or independent contractor.
Section A, Page 6	Medium	Medium	The explanation for the "volunteer exception" refers to compensation from a "related" for-profit organization. Technically, such an organization is not really "related," as there is no connection between the reporting organization and the for-profit organization, other than what amounts to a coincidental linkage to one individual.	Rewrite this section to clarify that the "related" label does not apply to this relationship, and revise the Schedule R instructions to state that the "brother/sister" relationship does not include one to which the volunteer exception applies.
Section A, Page 7	Medium	Medium	The instructions state that "other compensation" must always include the value of certain health benefits, including "health benefits provided by employer self-insurance." It is not clear whether this includes, for example, payment by a self-insured organization of an employee's $100,000 hospital bill (and how the existence of a stop-loss policy might affect the amount reported), or whether the organization need only report the employee's share of the organization's overall assumed risk.	Provide explicit guidance with regard to "other compensation" reporting and self-insured health plans, preferably with the goal of enhancing comparability amongst all organizations: both those that self-insure and those that transfer risk to third parties.
Section A, Pages 7 - 9	High	High	Both the Example on Page 7 and the chart on Page 9 indicate that EMPLOYEE contributions to 401k and 403b plans are to be treated as additional compensation. The Example includes employee pre-tax contributions to a qualified defined-contribution plan in total "other compensation," despite the fact that these dollar amounts are already included in "reportable compensation" (Box 5 of Form W-2). Furthermore, the chart classifies an employee contribution to a 401k plan as a Part VII "other compensation" amount, as well as a Schedule J, Part C amount. This reporting requirement has the effect of double-counting employee pre-tax contributions: once as part of "reportable compensation," and again as "other compensation." This may be misleading to readers of Form 990. Furthermore, the same chart indicates that employee pretax contributions to a 403b plan should be reported as "reportable compensation," rather than as "other compensation." It does not make sense to report employee contributions to a 403b plan differently than contributions to a 401k plan.	Because it is already included in Box 5 of Form W-2, neither employee contributions to a 401k plan nor a 403b plan should be **separately** reported in either Part VII or Schedule J (see Schedule J comments). If detail of pre-tax contributions is desired on a per-employee basis, Schedule O can be utilized for this purpose.

Section of the instructions	Importance	Urgency	Comment	Recommendation
Part X - Line 3 - Savings and Temporary Cash	Medium	Medium	Certain types of accounts listed - money-market and certificates of deposit are publicly traded securities held in investment accounts.	Add words "unless held in an investment account with a financial institution."

Section of the instructions	Importance	Urgency	Comment	Recommendation
Appendix B, Gross Receipts description	Medium	Low	Math as described isn't as clear as it could be	Recommend rephrasing Form 990 math to: Gross receipts are the sum of Total Revenue (line 12 of Form 990 Part VIII) and the expenses previously deducted (sum of lines 6b,7b,8b, 9b and 10b of Form 990 Part VIII) The Form 990EZ math should then be rephrased to be consistent with the above example. The math definition would then also correlate more closely to the example provided.

Section of the instructions	Importance	Urgency	Comment	Recommendation
Glossary as a whole	Medium	Low	Overall note: words used in definitions that are also defined in the Glossary are to be italicized. That convention did not seem to be consistently used throughout the Glossary.	Revisit this section to ensure all terms that should be italicized are italicized
Definition of "allowance for doubtful accounts"	Medium	Medium	Rephrase definition	Propose the following or something to this effect: " a contra-asset account established to offset accounts receivable for amounts that will not be paid"
Definition of an "audit"	High	High	Rephrase definition to be more technically accurate	Propose the following or something to this effect:" a formal examination of an organization's financial records and practices by an independent, certified public accountant with the objective of issuing a report on the organization's financial statements as to whether those statements were fairly stated in accordance with generally accepted accounting principles (or recognized other comprehensive basis of accounting)"
Definition of an "endowment"	Medium	Medium	SFAS 117 is used as a reference initially with this definition however it is not defined here.	Italicize "SFAS 117" as part of this definition so the reader knows they can find the definition later on in the glossary
Definition of "financial statements"	Medium	Medium	Definition does not conform with SFAS 117 language	Propose the following or something to this effect: " A statement of financial position as of the end of the fiscal year along with a statement of activities and cash flows for the year then ended, as well as a statement of functional expenses for the year then ended (if applicable). "
Definition of "fixed formula"	Medium	Medium	Definition should include a reference to excess benefit transaction context	Expand definition to begin "Relates to excess benefit transactions (see Appendix G). In that context, a fixed formula……"
Definition of "fixed payment"	Medium	Medium	Definition should include a reference to excess benefit transaction context	Expand definition to begin "Relates to excess benefit transactions (see Appendix G). In that context, a fixed payment is……"
Definition "key employee"	High	High	Modify "key employee" definition.	Modify definition to take into account previous recommendation, as stated in Part VII, Section A, page 2.
Definition of "permanent (true) endowment"	Medium	Medium	Definition should be modified to align more closely with SFAS 117	Propose the following or something to this effect: " Permanent endowment relates to those endowment assets held that correspond to permanently restricted net assets. Such endowment funds are maintained……."
Definition of "refunding escrow"	Medium	Medium	See recommendation	Italicize "refunding issue" within the definition
Definition of "review of financial statements"	High	High	Rephrase definition to be more technically accurate	Propose the following: "A service provided by an independent accountant the objective of which is to express limited assurance that there is no material modification that should be made to the financial statements in order for the statements to be in conformity with generally accepted accounting principles. A review is substantially less in scope that an audit."

Schedule A

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Section of the instructions	Importance	Urgency	Comment	Recommendation
			No Comment	

Schedule B

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Section of the instructions	Importance	Urgency	Comment	Recommendation
Contributors listed on Part I*	High	High	It would be very helpful to specify whether governments should be included. It seems logical that they would not be, as they are not a person within the meaning of IRC section 7701, but it doesn't really matter because contributions are not limited for 509(a)(1) organizations.	Specifically including or excluding governments will get more consistent reporting between organizations.
Specific instructions for Part I*	High	Medium	The definition of "cash contribution" does not include credit cards.	Include them in the list of inclusions.

*Restated from our 2/08 comments.

Section of the instructions	Importance	Urgency	Comment	Recommendation
General Instructions, Pages 2 and 3	High	High	On Page 2, the instructions indicate that the definitions in the "General Definition of Terms" section are applicable throughout Schedule C. However, on the next page, the definition of "lobbying activities" is the one that applies only to section 501(c)(3) organizations. The definition of lobbying activities for section 501(c)(4), (5) and (6) organizations is different, in that it excludes local-level lobbying activities, and includes lobbying communications with a "covered executive branch official." The draft instructions attempt to differentiate between "lobbying activities/lobbying expenditures" (section 501(c)(3) organizations) and "lobbying and political expenditures" (section 501(c)(4), (5) and (6) organizations), but as many non-charitable organizations (and their advisors) think of their lobbying programs as "activities" and do not automatically associate political activities with lobbying activities, the general "lobbying activity" definition on Page 3 is confusing, and may lead to erroneous reporting.	Change the sentence at the bottom of Page 2 to read: "(Definitions in this section are applicable throughout this Schedule, *except where noted*)." Then, on Page 3, indicate that the "lobbying activities" definition applies to 501(c)(3) organizations only, and that the definition for section 501(c)(4), (5) and (6) organizations may be found on Page 6. It may also be useful to revise the definition on Page 6 as "Lobbying and Political Activities," and retool the definition accordingly. Alternatively, the general "Lobbying Activities" definition may be moved to the "Part II-A - Definition of Terms" section, on pages 3 - 6.
General Instructions, Page 3	Low	Low	The definition for "specific legislation" implies, but does not specifically state, that a "legislative proposal" may be one that may not yet have been introduced into a legislative body as an actual bill or action.	Change the definition to read as follows: "Specific legislation includes (1) legislation that has already been introduced in a legislative body and (2) specific legislative proposals that an organization either supports or opposes, *whether or not actually introduced into any legislative body*."
Part II-A section, Page 3	Low	Low	The definition of "exempt purpose expenditures," as well as the calculation in Part II-A of Schedule C, would be enhanced by the inclusion of a worksheet that would allow an organization to more easily calculate its "other" exempt purpose expenditures (Part II-A, line 1d). In our observation, too many organizations merely take total expenditures and subtract lobbying expenditures, to arrive at "other" exempt purpose expenditures. This often times leads to an overstatement of total exempt purpose expenditures.	Include a cumulative worksheet, perhaps at the end of the Schedule C instructions or in the specific instructions for Part II, stepping the organization through the various components of "other" exempt purpose expenditures.

Page 4 item 5 under exempt purpose expenditures	High	Medium	The extent that fundraising expenditures are includible as exempt purpose expenditures is unclear based on the phrase "Fundraising expenditures, except that exempt purpose expenditures do not include amounts paid to or incurred… if the amounts are primarily for fundraising."	Reword to clarify the extent to which fundraising expenditures are includible as exempt purpose expenditures. For example, if the amount paid is to an auxilliary of the organization and the amount is for fundraising purposes, then the amount would be excluded from exempt purpose expenditures.
Part I-A, Page 8, Lines 1 and 2	High	High	The instructions for Line 1 are contradictory for organizations that have separate segregated funds (SSFs). The first paragraph ("Note") instructs a section 501(c) organization with an SSF to "report transfers to the funds in Parts I-A and I-C." However, the next paragraph ("Line 1") indicates that a 501(c) organization collecting "political contributions or member dues earmarked for a separate segregated fund, [which] promptly and directly transfers them to that fund as prescribed in Regulations section 1.527-6(e) . . ." should *not* report those transfers in Part I-A. Accordingly, it is not clear what a 501(c) with an SSF is to do: does it report transfers in Part I-A only if it *fails* to correctly transfer funds in accordance with the Regulations? If this is the case, it is highly likely that many organizations will incorrectly report properly-made SSF transfers in Part I-A.	Revise the instructions to provide that either *all* SSF transfers be reported in Part I-A (with clarifying details presumably to be provided in Part I-C), or that *no* SSF transfers be report in Part I-A. If it is desired that a 501(c) organization with an SSF provide a detailed description of its direct and indirect political campaign activities (but not its transfers to the SSF) in Line 1, then the instructions for Line 2 should be modified to clarify that no SSF transfers should be reported.
Part I-A, Page 8, Line 3	Medium	Medium	The instructions for Line 3 indicate that an organization using volunteer labor hours in the conduct of its political campaign activities should estimate the total number of volunteer hours. The instructions do not specify whether volunteer hours associated with an organization's Separate Segregated Fund (SSF) should also be included - either in connection with the collection and proper remittance of SSF contributions, or the subsequent political activities actually conducted by the SSF.	Modify the instructions to specify exactly what volunteer labor hours should be included, and whether it would be desirable for the organization to provide a breakdown of those hours (organization vs. SSF, for example) in Part IV of Schedule C.
Part I-C, Page 9	Low	Low	The Line 2 instructions specify that an organization transferring its own funds to its SSF for political purposes would report such transfers here. This directive implies, but does not explicitly state, that such amounts would likely include political contributions or member dues collected but *improperly* transferred to the SSF, through a failure to follow the procedures set forth in Regulations section 1.527-6(e).	Clarify the Line 2 instructions to explicitly include improperly-made transfers of collected political contributions and member dues.

Section of the instructions	Importance	Urgency	Comment	Recommendation
Schedule D, Part I - Other similar funds or accounts	High	High	The definition of donor advised and other similar funds or accounts is too broad. Most temporarily restricted funds, where the organization reports the use to the donor, will not be considered donor advised funds, unless other donor control elements exist.	Temporarily restricted funds, where further donor control does not exist and the organization reports the use of the funds to the donor, will not be considered donor advised funds.
Schedule D, Part II, Line 4	High	High	The first sentence of the instructions for line 4 should be moved to be the first line for line 5.	Move the sentence to the instructions to Line 5
Schedule D, Part III, Line 1b	High	High	The instructions for this line should mimic the wording for the line.	The wording should include the terms "held for public exhibition, education or research in furtherance of public service…."
Part III, line 2	High	High	The IRS is under the misconception that SFAS 116 allows nonprofits to record collections as either 1) capitalized and held for public exhibition, education or research in furtherance of public services, or 2) held for financial gain. SFAS 116, para. 13 provides that contributed collection items shall be recognized as revenue or gains **[when contributed]** if collections are capitalized. SFAS 116, para. 26 provides that an entity that does not recognize and capitalize its collections should expense the cost of collection items purchased and recognize as revenues or gains the proceeds of collection items sold.	Form 990 Line 2 needs to be revised to read: 2. If the organization does not capitalize its collections of art, historical treasures or similar assets, provide the following required to be reported under SFAS 116 relating to these items: a. Revenues from the sale of collection items included in Form 990 Part VIII line 7a(ii) b. Expenses related to the cost of collection items purchased included in Form 990 Part IX. Instruction pg5, last para, last line should be revised by inserting "sales proceeds and purchases of" between "report" and "its" and the second to the last line of the carryover para on pg 6 should be revised to say "pertains to collection items not capitalized, as those terms are."
Schedule D, part IV	High	High	The instructions ask for specific items that should be "carve outs" for items not to be included in this section	The following items should be specifically carved out of this section, Patient trust funds, consumer funds, patient and other security deposits related to a exempt program, etc.
Part IV, line 1a	Medium	Low	Clarify "carveout" as it relates to charitable remainder trusts.	Charitable Remainder Trusts are subject to separate tax reporting, therefore the Part IV "carveout" does not appear to be necessary.
Schedule D, part XIV, Supplemental Information	High	High	Reference in the instructions to Part XIII, lines 2d and 4. The reference is missing a letter, it should be to 4b.	Add the reference to "4b" rather than just 4.

Schedule E

Section of the instructions	Importance	Urgency	Comment	Recommendation
			No Comment	

Schedule F

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Section of the instructions	Importance	Urgency	Comment	Recommendation
Highlights	High	High	Items 1-5 contain definitions that duplicate the same information in the Instructions.	Consolidate definitions. Move definitions for Grantmaking, program services, fundraising from instruction to Highlights or vice versa.
Highlights			Important reporting methods should be revealed in the highlights.	Several policy matters could be summarized in the highlights:
	Medium	Medium		For 2008, Part II, column (a) does not require grantee's name nor in column (b) an EIN #.
	High	High		Part I only reports expenditures paid from accounts outside the U.S.
Specific Instructions for Part I General Information	Medium	Medium	Column (d) has insufficient room to make required descriptions.	Create specified list of activities for input -- (a) Grants to organizations and individual (b) Program services, (c) Fundraising. Also in the future, the space for descriptions should be expanded unless the code idea for columns (d) in Part I and column (h) in Part II are implemented.
	Medium	Medium	Column (e) has insufficient room to make required descriptions.	Create specified list of activities for input -- (a) Orphanage, (b) School, (c) Hospital, (d) Church, temple mosque or synagogue, (e) Disaster relief efforts, (f) relief for indigents, (g) housing restoration or building (h) health care, (i) agricultural, (j), education or cultural programs, (l) water programs, (m) Other
General Instructions, Page 2	Low	Low	The definition of "foreign organizations" does not mention those organizations formed outside of the United States, but that have received a section 501(c)(3) determination letter, nor do the instructions indicate whether such organizations should be flagged or classified differently in this Schedule, in light of the fact that they actually have a U.S. determination letter.	Provide a definition for such organizations, and further distinguish such organizations from (a) organizations recognized as charities by a foreign country, and (b) an organization that has provided a "good faith determination" that it is the equivalent of a U.S. 501(c)(3) organization.
Part I, Line 3, Columns (d) and (e)	Medium	Medium	It appears that there are only four activities that may be listed in this section: (a) grantmaking, (b) fundraising, (c) program services, and (d) unrelated trade or business activities. It is unclear, from the instructions and the heading of Column (d), whether unrelated trade or business activities are considered a type of program service, or a separate category entirely. It is also unclear whether a passive investment, as referenced in Page 2 of the instructions, would be considered a separate activity to be listed.	Explicitly note the types of activities that should be listed in Column (d), including unrelated trade or business activities and/or investments, if includible. Also specify whether the type of unrelated trade or business activity needs to be detailed in Column (e).

Part II, Line 1, Page 4	Low	Low	The "TIP" at the bottom of Page 4 does not indicate that the organization should check the box at the top of Part II (meaning that no one recipient received more $5,000).	Rewrite the "TIP" to include the check-the-box instruction.
Part II, Line 2, Page 5	Medium	Medium	Part II, Line 2 on Schedule C itself mentions only two classifications of foreign organizations: (a) those recognized as charities by a foreign country, and (b) those that have received a "section 501(c)(3) equivalency letter." The Line 2 instructions add a third classification: a foreign organization that has been recognized by IRS as a 501(c)(3) organization and that has been awarded a determination letter. This is confusing, especially in light of the fact that the general instructions do not make mention of such an organization (as noted in comment above).	While there is no real remedy for 2008, the 2009 form should be revised to include this classification of foreign organization, in Line 2.
Part II, Line 2, Page 5	Medium	Medium	Is it intended that the "section 501(c)(3) equivalency letter" referenced on Page 5 be produced in accordance with sections 53.4942(a)-3(a)(6) and 53.4945-5(a)(5) of the regulations, following the procedures set forth in Rev. Proc. 92-94? If so, it might be useful to reference these regulations, as well as the Revenue Procedure, in this section of the instructions.	Provide the Regulations and Rev. Proc. references. It would also be useful to distinguish amongst the various types of foreign organizations and their classifications as charitable organizations, in the General Instructions (as previously noted, above).
Schedule F,Lines 1 and 2	Medium	Medium	The instructions require a description in Part IV of how an organization monitors grants to ensure their proper usage, and provides examples of such monitoring, including "friends of" organization that supports specifies foreign organizations. The instructions, however, do not provide any degree of specificity with respect to such procedures, and do not make clear whether "friends of" organizations are required to describe their grantmaking procedures.	The instructions should provide references to IRS source material , as well as other relevant sources that are applicable , including the USA Patriot Act and Executive Order13224. In addition, the Council on Foundations on its web site devoted to cross border philanthropy(usig.org) has significant resources to assist organizations in need of guidance. With respect to "friends of" organizations, there should be references to Revenue Rulings that establish the process to be followed by such organizations with respect to grant making.
Instructions for Part IV, Questions 14-16	High	High	Instructions for the Part IV questions and Part IX, line 3, should be coordinated.	Expand instructions for line 14b to include instruction for Part I of Schedule F that does not include money disbursed in the U.S.

Instructions for Part IX, line 3	High	High	Instructions to Statement of Functional Expense should be coordinated with Schedule F.	If Schedule F, Part I, does not report expenses paid in the U.S., shouldn't the Page 15 instructions to line 3 provide the same instruction?
Instructions for Part IV, lines 14-16, Part IX, line 3, and Schedule F	High	High	Term "assistance to organizations" should be defined.	Remove the term. All grants provide assistance so word "assistance" is duplicative. Money spent on programs not directed at particular organization is captured in Question 14b.
Form 990 EZ	High	High	Why isn't the IRS requiring Schedule F for organizations that file Form 990EZ? There are many organizations that will qualify for the 990EZ in 2008 that have significant foreign activities	Not exclude Schedule F for Form 990EZ.
General	High	High	Revise foreign activity thresholds.	In future years, thresholds for foreign activity could be combined and raised to a single amount of $15,000 similar to domestic thresholds.

Section of the instructions	Importance	Urgency	Comment	Recommendation
Part I	Low	Low	The scope of events generating gross receipts of $15,000 or more will be too low in the future.	Consider indexing scope in the future.

Section of the instructions	Importance	Urgency	Comment	Recommendation
Highlights #1 3rd Bullet	High	High	States that the definition of facility is a campus, building, structure, or other physical location or address at which the organization provides medical care. This would include even blood drawing stations offsite.	Listing each outreach site for blood drawing is a burden and not really providing valuable information - therefore, recommend changing the definition such that if the medical care is only blood drawing or something similar to this it should not be reportable.
Schedule H, and Core Form, Line 20	High	High	The definition of a hospital refers to a facility that is, or is required to be , licensed or certified in its state as a hospital, regardless of whether operated directly or by indirectly through a disregarded entity or joint venture taxed as a partnership. Although nursing homes are not certified or licensed as hospitals, there are those that were classified as hospitals by the IRS at a time when such organizations were classified as chronic care or acute care facilities. The Centers for Medicare and Medicaid Services ("CMS") do not consider nursing homes as hospitals. Given longstanding IRS classification as hospitals , and CMS nonrecognition of such facilities as hospitals, there is uncertainty on the part of such facilities as to whether they are required to complete Schedule H.	To provide clarity, the instructions should provide that facilities classified by the IRS as hospitals, but neither certified or licensed as hospitals by their state, nor required to be so certified or licensed, are not required to complete schedule H.
Schedule H	High	High	The instructions for Part V, the Highlights, line 1, third bullet point gives the definition of a "facility" as a location where the organization provides care. The same definition should be included in the instructions for Part V and is currently not included.	Reiterate the definition of a facility as a location where the organization provides care in the Instructions.

Section of the instructions	Importance	Urgency	Comment	Recommendation
General Instructions	High	High	There is no indication of whether the information should be on a cash or accrual method of accounting.	Add to instructions that the amounts are reported on the method of accounting the organization normally uses. The amounts should be reported in the amount that is included in expenses on the statement of activities and not on the discounted basis reported on the balance sheet.

Section of the instructions	Importance	Urgency	Comment	Recommendation
Line 1a, Page 4	Low	Low	The instructions for Line 1a, Certain Benefits, indicates that Part III should be used to provide relevant information with regard to any of the boxes checked, and that such information "may" include: type of benefit, who received the benefit, and whether it was treated as taxable compensation. Use of the word "may" appears to indicate that provision of this information is optional.	Change the wording of the sentence to say: " . . . Provide in Part III of this Schedule relevant information regarding these items, including, at a minimum, the following:"
Line 1a, Page 4	Low	Low	The definition for "first class travel" includes "any travel on an airplane or boat that is owned by the organization." This would imply that travel on an organization-owned boat or plane is similar to first-class travel in that it is more expensive than regular travel -- which may or may not be the case. Furthermore, travel on an organization-owned vehicle has more in common with "charter travel" than it does with first-class travel.	Switch company-owned vehicle travel from "first class travel" to "charter travel." This will have no real impact on Schedule J itself, as the checkbox combines both first-class and charter travel, but it might help the organization better classify and explain such travel arrangements in Part III, as well as put such travel into the proper frame of reference for readers of Form 990.
Line 1a, Page 4	Low	Low	The definition for "personal services" includes services provided by a physician or other medical specialist. It is not an uncommon practice for corporations to subject their executives to a routine annual physical examination, for the benefit of the organization itself, as well as the executive (in the belief that a healthy employee is a better employee).	Change the "personal services" definition to exclude the annual "executive" physical examination, to the extent that such exam is a routine, baseline exam (as opposed to an ultra-comprehensive, high-tech exam utilizing cutting-edge technology and testing).
Line 2, Page 4	Medium	Medium	The Line 2 instructions indicate that a "yes" answer requires substantiation of all expenses or benefits listed in Line 1a. By definition (Page 4 of the Schedule J draft instructions), a discretionary spending account does not require substantiation under the accountable plan rules. Accordingly, an organization that provides a discretionary spending account to one or more executives, but otherwise requires substantiation of all other expenditures, might have to check "no" to this question.	Clarify the instructions for Line 2 to permit organizations providing discretionary spending accounts to check "yes" if they otherwise require substantiation of all other expenditures subject to the accountable plan rules.

Line 3, Page 4	Low	Low	The Line 3 instructions refer to compensation of the CEO/Executive Director, but do not further define the position.	Clarify that a "CEO/Executive Director" is an organization's top management official, who reports directly to the Board of Directors; and that such individual may have a different title, including "Executive Vice President," "President," etc.
Lines 5 and 6, Page 7	Medium	Medium	The instructions for Line 5 define "net revenues" as "gross revenues less certain expenses." Likewise, the term "net earnings" is used, but not further defined. These are vague definitions, and may be confusing, especially to those persons lacking an accounting or bookkeeping background.	Provide a more concise definition of "net revenues," specifically naming those costs that could be included as revenue offsets. For example: discounts, cost of goods sold, direct costs, etc. Also provide a more comprehensive definition of "net earnings," both overall and in terms of one or more activities of an organization.
Part II, Page 8	High	High	The instructions for Part II require that a former "key employee" must be listed if his or her reportable compensation is $100,000 or more. However, the floor for current "key employee" reporting is set at $150,000, in the current draft instructions. It does not make sense to report former key employees at a lower threshold level than current key employees.	The standard for former key employees should be revised upward to $150,000, even though this contradicts Page 7 of the form itself. There is already one such correction: on Page 2 of the draft Part VII instructions, a "Caution" box indicates that the Form 990, Part VII, Page 7 notation "regardless of amount of compensation" should be ignored, and the $150,000 threshold utilized, for current key employee reporting.

Part II, Page 8	High	High	The bulleted listing of individuals to be reported in Part II of Schedule J is confusing. Rather than making reference to Section A, Part VII of Form 990 -- from which all Schedule J reportable individuals are to be drawn -- the listing enumerates the individual positions, setting up seeming contradictions. For example: the first and third bullet points appear to conflict -- is a "former" individual to be reported if he or she received more than $100,000 of reportable compensation, or more than $150,000 of "reportable" and "other" compensation?	Reword the first and third bullet points as follows: *[first bullet]* "Each of the organization's former officers, former directors, former trustees, former key employees, and former five highest compensated employees, who were listed in Section A, Part VII of Form 990, AND who received more than $100,000 of reportable compensation from the organization and/or related organizations ($150,000 for former key employees), disregarding payments from a related organization if below $10,000;" *[third bullet]* "Any individual listed in Section A, Part VII of Form 990 for whom the sum of Columns (D), (E) and (F) of Section A is greater than $150,000;" *[fourth bullet]* "Any individual listed in Section A, Part VII of Form 990 who received or accrued compensation for services rendered to the organization from an unrelated organization . . ." The above approach is much clearer than the current instructions, which place the admonition to list only Section A, Part VII individuals in the paragraph *following* the bulleted listing.
Part II, Page 10	Medium	Medium	The instructions for Column (C) state that an organization should report an increase in actuarial value of deferred amounts only if they "exceed the increases that would be determined based on an interest or earnings rate that equals 120% of the applicable Federal rate." It would make more sense (and would provide for greater comparability between defined-benefit and defined-contribution types of plans) if the instructions would simply require an organization to report the estimated increase in actuarial value, regardless of amount. This would reduce the reporting burden on organizations, in that they would not have to first determine the increase in actuarial value, and then perform an additional calculation to determine if the increase were greater than the 120% AFR threshold.	Remove the 120% AFR threshold for reporting increases in actuarial value.

Schedule K

AICPA

Section of the instructions	Importance	Urgency	Comment	Recommendation
			No Comment	

Schedule L

AICPA

Section of the instructions	Importance	Urgency	Comment	Recommendation
			No Comment	

Section of the instructions	Importance	Urgency	Comment	Recommendation
Line 29	Low	Low	If the organization doesn't track how many Forms 8283 it completes, the instructions ask them to leave it blank rather than estimate.	It would be better to estimate the number of forms. Leaving it blank may mislead the reader.

Section of the instructions	Importance	Urgency	Comment	Recommendation
			No Comment	

Schedule O

AICPA

Section of the instructions	Importance	Urgency	Comment	Recommendation
			No Comment	

Section of the instructions	Importance	Urgency	Comment	Recommendation
Part V, line 2	High	High	Instructions refer to all organizations filing Schedule R must report certain transactions with a controlled entity as per IRC section 512 (b)(3). It would appear that the correct cite is IRC section 512(b)(13).	Correct the cite to IRC section 512(b)(13).

From: Michael Slinker
To: *TE/GE-EO-F990-Revision;
Subject: Suggestions
Date: Wednesday, May 21, 2008 6:46:22 PM

As a frequent user of the 990 forms in soliciting gifts from other foundations, there needs to be a better organizational layout to more quickly find information once the form in placed in a PDF format. Please consider requiring a **Table of Contents that includes page numbers for the various parts and sub-parts.** Thank you.

J. Michael Slinker, Ed.D.

Vice President for University Advancement & Executive Director of the Oregon Tech Foundation

Oregon Institute of Technology

From: gail egan
To: *TE/GE-EO-F990-Revision;
Subject: Key Employee Salary disclosure
Date: Thursday, May 22, 2008 2:53:03 PM

The intent of Form 990 is to obtain information relating to the operations of entities granted tax exempt status under section 501. The majority of entities tax exempt under Section 501 receive money from donor or grantor funding. A tax deduction is generally available to the donor or grantor. Disclosure of key employee compensation is relevant as amounts are paid from money raised from public sources. Private clubs exempt from tax under 501(c)(7) are required to file form 990. Private clubs receive their revenues from members who are not permitted a deduction for membership dues. The decision regarding compensation for key employees is generally made by the Board of Directors. No tax deduction is received for the amounts paid to these employees as funds received from members are not tax deductible to the member. The requirement to disclose salaries for key employees should only be for entities that receive funds from grantor or public sources.

From: Dave Whalen
To: *TE/GE-EO-F990-Revision;
Subject: comments on the new form 990 for 501(c)(7) organizations
Date: Thursday, May 22, 2008 5:49:59 PM

May 22, 2008

IRS
Draft 2008 Form 990 Instructions,
SE:T:EO
1111 Constitution Ave., NW
Washington, DC 20224

RE: COMMENTS TO SECTION VII OF INSTRUCTIONS FOR FORM 990

To Whom It May Concern:

On behalf of Laurel Oak Country Club, I would like to provide comments to the proposed revisions to the Instructions for Form 990. These comments concern the new Section VII of the Form which requires 501(c)(7) organizations to report the annual compensation of the "five highest compensated employees (other than an officer, director, trustee or key employee) who received compensation".

Laurel Oak Country Club (LOCC) is a private country club that offers enhanced luxurious accommodations for country club life including golf, tennis and swimming. Members pay a premium to belong to such clubs. LOCC has a governing board of directors and numerous sub committees that provide oversight on such items as employment and compensation. Private Clubs such as LOCC provide a service to a limited, private sector and generate revenues solely by membership dues and other member and guest charges for these services. Administrative expenses, such as salaries, are included in the budget and available for member review. Importantly, neither Private Clubs such as LOCC, nor their finances are open to the General Public.

Requiring the disclosure of the compensation paid to high-level employees of Private Clubs will expose sensitive and private financial information to an unintended audience. This is not the intent of Congress and the gathering of such information by the Secretary can not be said to be used for any purpose of

carrying out the internal revenue laws.

The "Overview of 2008 Form 990 Instructions", (April 7, 2008) provides that the redesign of the 2008 form 990 is based upon three guiding principals: (1) enhancing transparency to provide the IRS and the public with a realistic picture of the organization; (2) promoting compliance by accurately reflecting the organization's operations so the IRS may efficiently assess the risk of non-compliance; and (3) minimizing the burden on filing organizations. None of these reasons can be relied upon for the extension of the reporting requirement that is codified only for 501(c)(3) organizations.

> ENHANCED TRANSPARENCY for the IRS and the PUBLIC. First, I support the concept of transparency, including the disclosure of compensation for officers, directors, and key employees for IRS purposes. However, I do not support nor believe that there are provisions within the Internal Revenue Code or has it ever been the intent of Congress to use the Internal Revenue Code as a fact finding tool for the general public, other 501(c) organizations, donors or state regulators. Second, while a need for transparency exists with regard to the IRS, that need is to be able to determine that an organization's business is as it discloses. In this case, Private Clubs governed by 501(c)(7), are a self servicing industry with no profit. They are not dependent on the general public, donors or government grants for their finances. The need for transparency to other than the IRS is non-existent.
>
> PROMOTION of COMPLIANCE by REFLECTING ORGANIZATION'S OPERATIONS to ASSESS the RISK of NON-COMPLIANCE. The disclosure of the five highest paid employee's salaries and names is but a miniscule part of the finances of a Private Club. Such information can be reported and examined without the disclosure of the individual's name. In fact, such information can be gleaned from a general reporting of amount of the salaries. The comments to the promulgation of the Form 990 indicate that there is concern about the prohibition against private inurement. The whole concept of a ban on private inurement is based upon prevention of an improper benefit to a private shareholder or individual who controls the organization. Such is not and could not be the case with an employee of a private club, whether the top five compensated or the bottom five compensated. Compensation of an employee is a proper use of club

finances, the amount of which is within the sole discretion generally of the Board of Directors. It is not an inurement.

MINIMIZE the BURDEN on FILING ORGANIZATIONS. Prior to this new requirement, no 501(c)(7) was required to provide this information. This reporting requirement will create a vast burden upon Private Clubs. Initially, it will cause an increased cost to prepare the organization's annual tax filing. Thereafter, the burden will increase exponentially as this will result in an increase in the cost of labor due to a higher turnover of these highly compensated positions. Access to this sensitive financial information will cause both management and mainline staff to leverage compensation increases, while other organizations (both exempt and non-exempt) will use this information to lure away employees. In short, the burden created by this disclosure requirement will drive up costs for Private Clubs and cause a severe economic disruption in this industry.

Laurel Oak Country Club suggests that the reporting requirement not be extended to 501(c)(7) organizations. These organizations are not the same as other 501(c) organizations such as charities, religious organizations, hospitals, private foundations, veteran's organizations, trusts, farmer co-ops and universities. Nor are they included in the same category as those organizations that have public fund raising, federal grants, and government aid.

PRIVATE COUNTRY CLUBS:

- DO NOT Accept donations or have any fund raising
- DO NOT Receive government aid, i.e. federal grants
- DO NOT Receive any financial remuneration from the general public
- DO NOT have any educational purpose
- DO NOT have any scientific, literary purpose
- ARE NOT social welfare organizations
- ARE NOT open to the general public

If private country clubs do not follow the above bullet points, then let them disclose the salaries. The type of oversight that this reporting requirement is intended to provide is not applicable to 501(c)(7) organizations. Private Clubs are different and should be treated as such as it pertains to the new IRS Form 990 Ruling.

Sincerely,

David L. Whalen, CCM
General Manager/COO
Laurel Oak Country Club

From: Kirk Sherman
To: *TE/GE-EO-F990-Revision;
Subject: Comments on Form 990
Date: Friday, May 23, 2008 10:57:59 AM

We applaud your efforts to update Form 990. We believe the new Form will facilitate more accurate reporting of compensation and encourage use of best governance practices. We have the following comments and suggestions:

1. Form 990 Core Part VII, column F – Other Compensation – The description of items to be reporting in Column F (subject to the $10,000 exception) include (i) tax-deferred employer and employee contributions to a qualified defined contribution retirement plan (item 1); (ii) tax-deferred employer and employee contributions to, and earnings on, nonqualified deferred compensation plans (item 3); and (iii) the increase in the actuarial value of a qualified defined benefit plan (also item 3). What seems to be missing is the increase in the actuarial value of a nonqualified defined benefit plan. This absence implies that the increase in a nonqualified defined benefit plan would not be reported. This language should be revised to pick up the nonqualified defined benefit plan.

2. Compensation Table for Reporting on Part VII or Schedule J – Two comments on the table. First, the table also seems to exclude reporting of increases in the actuarial value of a nonqualified defined benefit plan, since such increases typically are not contributions, and are only partially earnings on amounts previously reported. You may want to add a line picking up the "reasonable estimate of increase in actuarial value" of a nonqualified defined benefit plan.

Second, the line for split dollar life insurance is blank. One inference would be that no Form 990 or Schedule J reporting is required for split dollar, even if the individual is taxed on the economic benefits of the arrangement or the interest value of the loaned premiums. The lack of clarity could result in disparate reporting among organizations with similar plans. A better approach may be to check column D in Part VII, Section A (reportable compensation) and column B(iii) for Schedule J (other W-2 compensation).

3. Schedule J Part I, Line 3 – In multi-corporate organizations, the compensation of a subsidiary CEO is often approved by the parent organization's board, not the board of the reporting organization. We recommend adding a statement in the instructions that if the CEO compensation is set by a parent organization, then the checklist items refer to those used at the parent level in determining the compensation of the reporting organization's CEO.

4. Schedule J Part I, Line 4 – Definition of Supplemental Nonqualified Retirement Plan – Wherever possible, having consistent definitions and calculations eases the costs of tax reporting and facilitates compliance. It is not entirely clear

what this question is meant to highlight, but it seems to focus on deferred compensation that is in addition to any elective deferrals or qualified plan benefits – i.e., deferred compensation providing benefits in addition to qualified retirement plans and elective deferral plans.

Section 409A already divides nonqualified deferred compensation plans into 9 categories. One approach to the definition would be to designate specific categories of nonqualified deferred compensation plans under the 409A definition that would be included. You could exclude categories referring to elective deferrals, split dollar, separation pay plans, and focus instead on non-elective account balance plans, non-account balance plans, and possibly the catch-all category of other plans.

5. Schedule J Part II, Column C – Reporting Nonqualified Deferred Compensation before Vesting – You asked whether reporting of deferred compensation should be required prior to vesting. The benefit of reporting as the benefits accrue prior to vesting is it presents a more accurate picture of the years to which the compensation is allocated, facilitating reasonable compensation comparisons. If benefits are reported only as they vest, the lump sum reporting in the year of vesting could skew the reporting (e.g., 15 or 20 years of benefits vesting at age 60) and give the public and those looking for comparability data the wrong impression. We support continued reporting of benefits as they accrue.

In this regard, and also in support of ease of reporting, we suggest that you require organizations to report in this column the W-2/1099 reporting of deferrals required for 409A purposes (i.e., Form W-2 Box 12, Code Y or 1099-MISC Box 15a).

A question that arises under this part of the instructions is 120% of which AFR (short-term, mid-term or long-term), and the AFR for which month? Using 120% of the Blended Annual Rate would be easier for calculation and compliance.

6. Schedule J Part II, Line 3 – Independent Compensation Consultant – The first part of the description of who qualifies as an independent compensation consultant is clear. Up to the second comma, we understand that to be independent the consultant (i) must not have a family or business relationship with the CEO, and (ii) must perform a majority of appraisals for persons other than the reporting organization. Looking at this criteria, a firm that is hired by the Board of Directors to perform audit services would be independent, as would a firm that the Board hires to conduct an executive search, a satisfaction survey, or legal services. The addition of “even if the consultant’s firm also provides tax and audit services to the organization” raises the question whether a third requirement is being added – that the consultant can have no other relationship with the organization other than performing tax and audit work. We recommend that the “even if” clause be eliminated or at least clarified by adding “for example” after “even if”.

Thank you for this opportunity to comment on the draft instructions for Form 990. Please contact me if you have any questions regarding our comments and suggestions.

Kirk

Kirk D. Sherman
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From: Eve Borenstein (BAM Law)
To: *TE/GE-EO-F990-Revision;
Date: Friday, May 23, 2008 11:52:15 AM
Attachments: SUBMISSION 04072008 Draft Instructions Comments.doc

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Please see attached word document of 13 pages (cover sheet and 12 substantive pages).
I am sorry that I did not have time to address more than what is covered there, particularly the Appendices and the Schedule G Instructions.

Eve Borenstein
Borenstein and McVeigh Law Office LLC (BAM law office)

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Eve's teaching practice is separately housed, continues to use the Tax Exempt Law domain name of her prior firm, and maintains the www.taxexemptlaw.org website.

Comments on 4/7/08 *draft* Instructions
By Eve Rose Borenstein[1]
Submitted 5/22/08

ORDER OF COMMENTS — Begins at:

[1] The author is a partner in Borenstein and McVeigh Law Office LLC, located in Minneapolis, MN, from which she practices exclusively with tax-exempt organizations on tax planning and compliance as well as on other administrative law applicable to nonprofit organizations. The majority of the firm's clients are small or medium size exempt entities. In addition to her law practice, she teaches nationally, through CPA Societies, as well as through nonprofit associations, on Form 990 preparation and the tax mandates the Form evidences.

Notes on Convention Given Disparate Definition of "Family" is Applied to "Relationships among officers, etc." than Applies in Glossary

Glossary's definition says use "unless specified otherwise". While it is laudable to have an overall definition provided in the Glossary, there either should be a reference there noting that same is not followed when definitions do indeed "specify otherwise", as is the case with the Line 2, Part VI's Instructions*, or the Glossary should note where disparate definitions occur. Preparers are not necessarily going to go back to the Glossary if they see a key term defined in an often-used Part (such as studying what yields "Relationships among officers, etc.") OR if they are used to the Glossary's definition, they may not be careful to find the other places where the application of the word is disparately applied.

Why/where this is noted: glossary includes "great grandchildren" while Part VI, Line 2 Instructions omit "great grandchildren". Glossary definition thus would apply for "Transactions with Interested Persons" per Schedule L's Instructions for its Part III (see page 4 of Schedule L Instructions) and Part IV (see page 5 of that Part's Instructions), and for Core Form Part VI Line 1 counting of "independent Directors" (see Part VI Instructions, page 2, first line). However, the Core Form Part VI Line 2 's Instructions (at page 2 of that Part's Instructions) give a definition is in the text which does not include great grandchildren.

* Such a fix could be effected by having Part VI Line 2 text at the block for "family relationship" start out with: "Unlike the glossary definition, and for purposes of this Line only, the family of an individual includes . . . ."

Coverage of Part II, Schedule L

I find it curious that loans to family members (of "insiders") have not been made *per se* reportable and wonder what the justification for this is. [As now written, Schedule L Instructions would only pick up "family" members in the case of 501(c)(3) and 501(c)(4) organizations, and then only to the extent they were to comprise a "disqualified person" as such term is used in Code Section 4958(f)(1). As a result, organizations can easily defeat this reporting requirement (which in the first place only requires disclosure of loans "outstanding at yearend"), by rewriting loans (or making new loans) that are (or would be) directly with a reportable "interested person" to effect same with that party's spouse or child or other "family member".]

Where this is noted: Schedule L Instructions (Part II) page 3.

Part VII Consistency and Intersection with Schedule J

It is laudable (and essential to consistency of reporting amongst filers) that Part VII's text (on the Form itself) and the Form's Instructions uniformly apply the term "reportable compensation" in reference to amounts that are to be reported in Section A's columns D and E.

The major change in the draft Instructions that would apply to *only* require listing of *key employees who have "reportable compensation"* in excess of $150,000 (in spite of the Form's initial header text – at the first asterisk following Line 1a's initial directive – which requires the listing of current key employees "regardless of amount of compensation") is predicated upon this

math process (adding D + E to get *reportable compensation*). It need be noted that the presence of any one key employee in and of itself would automatically trigger a "yes" answer at Line 4 (which as noted below, utilizes the addition of both columns D and E, PLUS column F), thus mandating the completion of Schedule J for such individual. Assuming this $150,000 floor is maintained as the minimum "reportable compensation" for disclosure of key employees, the Instructions should emphasize (perhaps via a "tip" at the definition of Key Employee, currently at page 2 of the Core Form Part VII Instructions) the corollary result that any time a key employee is inputted, Schedule J is also mandated. To this end, it would also be helpful if the chart on page 12 used separate rows for Officers versus key employees to demonstrate this specifically. Similarly, it would be helpful if the Instructions to Line 23, Part IV, made an addition to the clause in (b) so that it began: "<u>was required to report a key employee</u> or reported for any other person listed in Part VII more than $150,000 . . . ."

The Line 4 Instructions for Part VII (at page 12) denote, in conformity with the text of Line 4, that the "greater than $150,000" result that is applied as the trigger for Schedule J completion is predicated upon the sum of columns D and E (i.e., *reportable compensation)* <u>plus</u> column F (i.e., *other compensation*). Confusion will be generated from having one context (re who is disclosed as a key employee) in which filers are to add totals inputted in columns D + E, but here have a critical result require the adding of amounts inputted in columns D + E + F. The fact that the same amount ($150,000) applies in both contexts further compounds the possibility of both confusion and Instruction fatigue. This should be taken into consideration as a possible factor in favor of changing the key employee disclosure threshold.

[My other critiques of the Part VII Instructions appear later in this communication.]

<u>Highlighting "Related Organization" Definition (from Schedule R) as Necessary Predicate for Completing Core Form Part VII</u>

The overview provided in the Part VII Instructions in its second paragraph states that some persons are to reported in Part VII (as well as flowing over to Schedule J) "*only if their . . . [reportable or total] compensation* from the organization and related organizations (as defined in the Schedule R instructions)" exceeds certain thresholds. Certainly the basic need here – to define who is a related organization (thus that entity's compensation to the filer's individuals may thus be an issue) should be included HERE in this Instruction. If omitted as it is now, a better reference would be to the glossary, as the Schedule R Instructions are daunting in their length and readability.

A similar critique applies to the "Highlights and General" Instructions, at page 10, where in the sequencing's second point one is referred to the Schedule R instructions. There it would make sense to note (below the sequencing) what is a related organization and explain that same need be understood <u>in order to complete Part VII</u>.

<u>Appendix F and General Instructions: Address of Joint Ventures</u>

The term "joint venture" is NOT in the glossary in spite of being mentioned in the General Instructions multiple times. The only definition I could find was in Appendix F's Instructions,

where a circular definition appears on the 18th page into 29 pages. There, in a section of the Instructions labeled "Joint Ventures Taxable as a Partnership, it is stated:

If the organization participates as a partner or member of a joint venture, partnership, LLC, or other entity treated as a partnership for federal tax purposes (referred to here as a "joint venture"), as described in Regulations sections 301.7701-1 through 301.7701-3, . . .

I suggest that a clear definition be set out in the glossary. I also suggest that any and all references to "joint venture or other arrangement that is taxable as a partnership," should be modified to state "joint venture or other arrangement that is, or should be under the federal tax rules, accorded taxation as a partnership". Many exempt organizations are ignorant of the consequences of operating "in coalition" with other parties and fail to appreciate that the pooling of dollars to conduct activities jointly in an unincorporated format yields partnership taxation.

Part III Comments

Opening paragraph is excellent in its explanation of what is a "program service".

Line 1: Instructions close with a pithy sentence that directs no entry had the filer's Board NOT approved the organization's mission. While it is understandable that the IRS desires to underline and highlight the Board's legal function and responsibility, many smaller organizations adopt an operational mission that for a filing year (or beyond) via the Board's having approved a "program plan" or budget for the year. In such cases, a literal read of this Instruction would mean that the Board has not formally adopted a "mission" or enumerated purposes narrower than overall purposes in line with the organization's exempt status as expressed in Articles of formation. The Instruction should be amended to note that the Board is responsible to approve purpose/mission overall along with any changes to the purposes of the organization that are in the filer's chartering document (e.g., Articles of Incorporation) or any other organizational documents (e.g., by-laws or Constitution).

Lines 2 and 3: Text is necessary to express what the Service considers to be a "significant" new program service (Line 2) or "significant" change in how a program service is conducted (Line 3).

Line 4a-4c: Reference to "three largest program services as measured by total expenses incurred" need have a reminder/caveat that the phrase "expenses incurred" does NOT include donated services or discounts in charges for use of equipment or materials. Same could be referenced to the later-appearing paragraph on "Donated services". Here (or in that latter paragraph) it should be noted specifically that the Form 990 does not include such amounts (even if included under generally accepted accounting practices in financial statements of filer). This explication is necessary both as a reminder of that GAAP versus TAX reality as well as to give meaning to the closing sentence of this Line's Instruction that helpfully directs the filer to report in Schedule O if the resulting "three largest program services" so listed may have missed activities of "comparable or greater importance".

Text on "Description of program services" – page 2 of Part III Instructions – could include examples for:

**trade association/business leagues – include number of members served who accessed information and/or networking through organization's specific events and newsletters, include types of legislation promulgated or lobbied upon by paid staff and/or volunteers

**social clubs – include number of members served by restaurant/bar operations, recreational facilities (e.g., tennis courts, golf greens), hours of operations for each

**veterans organizations – include number of members served in or by post facilities as site for recreation of and programming for those members; enumerate number of hours that restaurant/bar operations were afforded at post (or elsewhere) for members' benefit; enumerate community and patriotism programming (e.g., veterans cemetery maintenance, memorial day celebration); enumerate assistance to wounded veterans and their families, etc.

Part IV Comments (relating to use of Schedules)

Line 1: "Yes" answer is required if organization "is a section 501(c)(3) . .. organization that is not a private foundation". Directive should be provided for organizations who have a filed Form 1023 that is pending (i.e., directing them that they are "a section 501(c)(3) organization" and thus need complete Schedule A (or not)).

Line 2: Clarification should be provided as to when a 509(a)(1)/170(b)(1)(A)(vi) group checks "yes" to signify it has met the 33-1/3% support test – checking 16b on this year's Schedule A, Part II (signifying met the test only on the PRIOR year's 990) or 16a on that same Part (met the test THIS year) is appropriate cross-reference that Instructions should provide here.

Line 3: As I note earlier in these comments, references to "joint venture or other arrangement that is taxable as a partnership", should be modified to state "joint venture or other arrangement that is, or should be under the federal tax rules, accorded taxation as a partnership". Many exempt organizations are ignorant of the consequences of operating "in coalition" with other parties and fail to appreciate that the pooling of dollars to conduct activities jointly in an unincorporated format yields partnership taxation.

Line 9: The question here has three components, two of which relate to funds held ostensibly for others. Each of those two ("escrow account liability" and "custodial account") are not addressed in the glossary (indeed, "escrow account liability", a new item of the balance sheet at Part X, Line 21, is new). The Instructions at page 2 include as a scenario for when one holds funds in a "custodial account", situations when the assets are not reported (and there thus would be no offsetting liability), if the amounts are "held in a trust account or in an escrow account". Many organizations hold such funds in undifferentiated accounts (for example, when one party is collecting members' fees and remitting dollars in paying expenses for a "coalition" it participates in). The reach of this question need accordingly be honed and the definitions for each of the two

terms “escrow account liability” and “custodial account” should be highlighted clearly as two of the three parts that Line 9 intends to reach (either in separate blocks here or in the glossary).

Line 10: The Instructions here as well as in the Instructions for Schedule D, Part V need mention FASB 136’s address of so-called “agency endowments”.

Line 11: The Instructions should here mention the threshold applied to these Schedule D items OR require “yes” answer only if the triggers from the relevant Instructions to that Schedule are achieved.

Line 18: It is very helpful that the Instructions specify that the $15,000 is an aggregate between the parenthetical preceding the input on line 8a (which correlates to line 1c) and the amount on line 8a.

Lines 25a/b: TIP is excellent!

Line 29: What is meant to be covered by the directive that receiving >$25,000 in non-cash contributions yields a “yes” answer “regardless of whether [the filer] reported such amounts as non-cash contributions in Part VIII, line 1g”? An example here would be of assistance.

Line 37: Assuming this inquiry (and Schedule R Part VI) intends to pick up the conduct of activities through unrelated organizations that are taxed as a partnership (or should be, except for entities already treated as a taxable or tax-exempt corporation) the Instructions here need language to state that. See my earlier comments on Joint Ventures and Appendix F on page 2.

General Instructions

B (Exclusion from Filing Requirement), point 12: organizations who are in a forward 60-month termination period under 507(b)(1)(B), in successfully establishing meeting a “public support test” throughout such period, are told to file a Form 990 on the fifth (and final) tax year in the termination period. However, the Instruction here (page 9) state that these filers are to file a Form 990-PF for all tax years within the termination period.

C (Sequencing):

1. As noted earlier, some explanation that determining one’s “related organizations” is essential for proper completion of Part VII should be provided (this via sequenced-item number 2) – and the relevant definition of a “related organization should be noted in this section).
2. Sequenced-item number 3 encourages the completion of financial statements which themselves (at Part X, line 5) asks for an entry that is dependent on the determination that Part VII will make for current trustees, directors, officers, and key employees.

E (Where, When, How to File):

1. There is no address for organizations taking the position that they “are described in” a 501(c)-subsection. What can be inferred from the Instructions is that organizations whose exemption application has been filed (and thus, “is pending”) must file (see page 1 of “Heading,

Part I and Part II Instructions). Specific address of requirement to file (if such mandate exists) and due dates need be made for both organizations planning (but not having yet filed) an application as well as those who hold themselves out as exempt under 501(c)(4) (or any other of the subsections), for which exemption applications are not necessarily mandated by the Code.

2. Third paragraph states that an attachment should be provided *if the return is not filed by the due date*. This requirement, buried on page 12 of the Highlights and General Instructions, will need be expressly highlighted in the final Instructions. How that attachment is to be effected (Schedule O or elsewhere?) need be addressed.

G (Amended Return/Filing Return): The note that an organization needing a copy of an already filed return can access one by request of the IRS upon Form 4506 is helpful. However, that process is not quick and it would be beneficial to note that copies of filed returns (without Schedule B) may be available immediately (and typically at no charge) on either the www.guidestar.org website or via the Economic Research Institute's website.

H (Failure to File Penalties): The mandate to "make an entry (including a zero when appropriate) on all lines requiring an amount to be reported" is not typically followed by filers. Doing so is time-consuming. If the position of the IRS is to have same be a requirement that will lead to an "incomplete return" if not followed, this need be better communicated and trumpeted to both the filer and preparer communities.

J (Requirements for a Properly Complete Form 990): Recordkeeping. Rather than state that records usually are kept for "3 years", it would be more helpful to state that the statute of limitations is 3 or 6 years, depending on [explain].

Heading (Part of Heading, Part I and II Instructions)

Item B/name change: does the IRS really want amendments to the Articles of Incorporation (or similar documents in the case of a trust or association) filed with the 990 in the case of a name change *if these documents have already been filed with the IRS to secure an updated exemption letter*? If so, this should be stated.

Item B/application pending: address here results noted as necessary from General Instruction E query raised in prior section of these comments.

Item C: Use of Form 8822 to notify IRS of new address is noted as necessary "if a change in address occurs after the return is filed". Unless an organization is changing its address ON the date of filing, a change of address will be occurring "after the return is filed". In the past, it has been necessary to use Form 8822 to ensure that payroll tax return reporting was properly updated. The directive here should be expanded to properly note the need(s) to file Form 8822 as necessary.

Item D: Excellent tip here re requirement to use one's own EIN and not a "sponsor". Additional examples of common errors in using another's EIN should be addressed, a chief example being:

affiliates (including taxpayers whose exemption arises under a group ruling letter) must not use the EIN of their parent or central organization

Item K: It is the case under multiple State nonprofit corporation statutes that an incorporated entity may be "administratively dissolved" by the State for failing to file required annual reports. The status of filers in such shoes need be addressed: do they check the box to signify that they are a "corporation" even if they have fallen into administrative dissolution (a status which is sometimes repairable, and sometimes not)?

Part II, Signature Block (Part of Heading, Part I and II Instructions)

1. The Instruction gives three bullet points related to paid preparer's responsibilities – the second of which states that preparer information need be supplied. The parenthetical accompanying that second bullet point tells preparers to omit completing the PTIN and EIN blocks, except as described in the following text, where it is noted that only paid preparers completing a Form 990 for a section 4947(a)(1) charitable trust in lieu of Form 1041 need make the PTIN and EIN entries. This information is NOT well-understood by the paid preparer community and need be highlighted.

2. Re the last line of this Part on the Form (checkbox re "May the IRS discuss this return with the preparer shown above"), the Instructions in their last sentence state that a "No" answer should be employed if the IRS is to contact the organization or principal officer rather than the paid preparer. The implied practice here – that the IRS will contact the paid preparer if there is a "Yes" answer, but not contact the organization at the same time – would be detrimental to the exempt community's interest for many reasons. I urge the IRS to refute applying any such practice and ensure instead that all inquiries on a filing are simultaneously directed to both the filer and a paid preparer, thus allowing the organization an opportunity to respond on its own, address its fiduciary responsibilities (which may be at odds with the interests of the preparer) not incur costs without prior notice, etc.

Part VII, Compensation of [Managers]

[note that I earlier, on page 1, in a Section labeled "Part VII Consistency and Intersection with Schedule J", have provided comments on the intersection of this Part's reporting thresholds and measures as they relate to both reportable key employees and Schedule J trigger from Line 4 of this Part.]

1. Section A/Overview (page 1): Here (and throughout this Part's Instructions) references to "reportable compensation" should note "per Columns (D) and (E)" (or something similar) to emphasize conformity with the input grid used in this Section.

2. Defining/Addressing 'Officer' (page 2): While I completely concur with the sentence about to be quoted, it is essential that **same be highlighted**:
"For purposes of Form 990 reporting, treat the organization's top management official as an officer." I strongly suggest that a reference to that result also be noted in the section defining who is a Key Employee.

3. Defining/Addressing 'Key Employee' (page 2): It is obvious that setting the threshold at $150,000 will limit the number of individuals who need be listed. This is clearly helpful (and justifiable in terms of transparency) for organizations with $10 million or more in annual revenues or expenses. However, for most organizations with lesser access to external or internal resources of such magnitude, inclusion of individuals on this Part who function akin to Officers will be muted/mooted. That result appears contrary to the stated transparency goals for the Redesign, at least with respect to the public's access to information on the exempt sector. While the "top five" individuals who have not reached status for "Key Employee" reporting, but receive reportable compensation in excess of $100,000 are to be disclosed (as "Highly Compensated"), position as number six on that list (which can be accomplished by reducing W-2 compensation and increasing benefit plan contributions) still removes from input/disclosure a Key Employee under the present Form's definitions. This opportunity for gamesmanship is unfortunate and likely to lead to less disclosure from the very "out-liers" who need sunshine as an antiseptic!

4. Defining/Addressing 'Reportable compensation' (page 3):

a. The second paragraph is poorly written; rewrite to state:
Regardless of whether the organization did not file Form W-2 or did not file a Form 1099-MISC (even if, for the latter, it did not have to because the amounts paid were below the filing threshold), include and report the amount actually paid.

b. The last sentence of the second paragraph ("Do not apply this rule to related organizations") is curious. I would suggest the following alternative:
Filing organizations are not responsible to include amounts paid by a related organization should Form W-2 or Form 1099-MISC not have been filed, unless it knows the amount actually paid.

5. Defining/Addressing 'Reportable compensation' (continued onto page 4):
The bullet points provided to explain what is aggregated in payments from the filer and a related organization to determine whether "reportable compensation" of $100,000 or $150,000 have been exceeded introduce an exclusion amount that will be missed. The edict to "disregard payments from a related organization if below $10,000" should be bulleted separately.

6. Defining/Addressing 'Reportable compensation' (still page 4):
The final paragraph here is very difficult to follow.

7. Defining/Addressing 'Other compensation' (page 4):
Readers should be told that more detailed information on what items are to be included in Part VII Section A's Column F appears in this Part's specific Instructions below.

8. Defining/Addressing 'Group returns' (page 5):
The first sentence could be clearer and I would suggest changing the last six words from, "in addition to the group return" to:
in addition to any group return it may file (which is elective).

9. Column (B) Instructions (page 5):

It is unclear whether the instruction's first sentence or last sentence controls reporting of hours provided to all related organizations. Must they be reported in this column (along with hours provided by the individual to the filer) or are they to be reported in Schedule O?

10. Column (C) Instructions (page 6):

The first full paragraph on this page addresses a topic that need be set out much earlier in this Part's Instructions. For fiscal year filers, the current list of "Officers" and "Directors/Trustees" is to be comprised of individuals serving on any day during the tax (fiscal) year, whereas the determination of key employees and five highest compensated employees who are "current" is to be predicated upon the calendar year that ended within the tax year given the need to tie these individuals to "reportable compensation" thresholds. That need be stated, as pertinent, in the "Defining/Address" sections on Directors or trustee (page 2), Officer (page 2), Key employee (page 2), and Five Highest Compensated Employees (page 3).

11. Column (F) Instructions (page 7):

The paragraph before the "Example" sets out that the $10,000 exclusion for certain "other compensation" items does not apply to testing for Schedule J disclosure on any individual (which occurs via answers to Section A's Lines 3 and 4), and then notes that Schedule J disclosure on any individual DO include amounts that fall within the exclusion for Part VII Column (F) reporting. This need be highlighted earlier in the address of such exclusion.

12. Line 4 Instructions (page 12):

The Instructions here (which state that one need "add all compensation included in columns (D), (E), and (F) of Section A" will need remind people that for this Line's purposes, Column (F) need be calculated (with the recalculation inputted in Section A should the result lead to (D) + (E) + (F) being in excess of $150,000, thus a "yes" answer on this Line) without the $10,000 exclusion provided on page 7 of the Instructions.

This need to incorporate a "true-to-the-penny" Column (F) for this Line's calculation is contrary to that Column's function. It also is an unnecessary complication which in its complexity and application will often be missed or improperly applied, yielding disparate results. It would make more sense to use clear thresholds by which the desired Schedule J disclosure is "triggered", perhaps along the lines of (just as an example):

For purposes of this Line, the sum of reportable compensation (i.e., Columns (D)+(E)) and other compensation from the organization and related organizations is considered to be greater than $150,000 IF:

*amounts inputted in Columns (D)+(E)+ the value of all benefits (i.e., including those not required to be inputted at Column (F)) exceed **$160,000**; OR*

*amounts inputted in Columns (D)+(E)+(F) exceed **$145,000***

13. Examples for Line 5 (page 14):

Example 2 gives a supposedly pertinent fact, that the law firm who has one of its attorneys providing services to a filing 501(c)(3) legal aid society at no charge to that organization is not treating the attorney's compensation "as a charitable contribution to the legal

aid society". That result is true as a matter of law and thus is a red herring that should not matter to this Example's conclusion.

Schedule A

Part I

1. (page 4/5) Examples under 'Accounting Method':
Both assume that the organization has not made a change of accounting method in 2008. They also assume that the 2004-2006 columns on the 2007 990 were completed under the cash method. These assumptions will not apply to all organizations.

Accordingly, the first example should explicitly state that if the organization has used the "Cash" method of reporting its financials on the 2008 Form 990, it may only use in this return's Schedule A reporting the 2004-2006 columns of the 2007 Schedule A *had those been prepared under the "Cash" method.* This example should then state that the organization must complete both the 2007 and 2008 columns under the "Cash" method.

Similarly, the second example should explicitly state that if the organization has used the "Accrual" method of reporting its financials on the 2008 Form 990, it may only use in this return's Schedule A reporting the 2004-2006 columns of the 2007 Schedule A *had those been prepared (albeit not in accord with the 2007 Form's directives) under the "Accrual" method.* This example should then state that the organization must complete both the 2007 and 2008 columns under the "Accrual" method.

And finally, to ease burden and allay concerns *earlier* in the preparation process, the tip that appears on page 15, re the "public support percentage" calculation from the 2007 Form 990 not needing to be recalculated should either be repeated here or referred to!

2. (page 5) Part I's "TIPs" and Examples: These are excellent and will go far to ease the administrative burden on filers.

3. (page 8) Line 6: In accord with the Instruction's directive that "organizations should not check this box", I would recommend the Form for next year include a "see Instruction" note.

4. (page 8) Line 8: It would be helpful if it was narrated (alongside the explanation of what "is" a community trust) that community trusts are required to meet the same public support percentage standards set out in 170(b)(1)(A)(vi) for organizations normally receiving substantial support from a governmental unit or the general public, described above for line 7.

5. (page 10) Line 11(e): What period does the certification apply to (last day of the year or all days of the year? If the organization in 2007 had been impermissibly under the control of one or more disqualified persons, but believes itself to have abrogated that control for all days in 2008, does it make this certification? For filers addressing such deficiencies (which are being uncovered as 509(a)(3)'s seek legal counsel post-PPA2006) the Instructions would be a helpful place to post directives regarding procedures on disclosure (e.g., in Part IV), correction the IRS wants to see, and address need to amend prior year's filings, if so required.

6. (page 10) Line 11(h), Column (iii): The Instructions should address what information source(s) can be relied on to describe the supported organization (e.g., the supported organization's assertion, the supported organization's determination letter, the EO master file, etc.)

Part II

1. (page 11) Line 1: The second sentence could note that the 2008 990 captures such fees on Part VIII Line 2 rather than on a separate line for "membership dues" as on prior years' Forms.

2. (page 12) Support from a Governmental Unit: This three sentence paragraph addresses an extremely difficult area, i.e., when is a government contract a "contribution" and when is it "program service revenue". It is laudable that same is being addressed here, but the paragraph's second sentence is almost impossible to parse. I recommend changing that sentence overall to say:

This includes any amounts received from a governmental unit which may be treated as contributions, rather than "gross receipts" akin to program service revenues. Amounts received from governmental units as donations or contributions, as well as amounts received in connection with a contract entered into with a governmental unit for the performance of services or in connection with a government research grant, are contributions (to be reported in Part II Line 1) unless they are 'received in the course of *exercising or performing the organization's tax-exempt purpose or function' (see below). Amounts 'received* in the course of *exercising or performing the organization's tax-exempt purpose or function' are reported in Part II Line 12.*

Exercise or performing the organization's tax-exempt purpose or function: [use 3rd sentence of paragraph]

3. (page 12) Unusual Grants: An explanation as to why the list is NOT to be filed with the Form 990 or 990-EZ, and why Part IV should not include the names of grantors is essential. Filers should be told that if they are to include the list or names, same will be open for public inspection (assuming that is the case).

4. (page 13) Line 2: The last sentence should close with "or in Part XIII of Form 990 or Part __ of Form 990-EZ".

5. (page 13) Line 3: The last sentence of Line 2 ("Report these revenues whether or not the organization includes this amount as revenue on its financial statements [or, as I suggested be added there, Form 990 or 990-EZ]) should also appear here.

6. (page 13) Line 5:

a. How is a filer supposed to know whether a funder who is a church, educational institution, hospital, or organization operated for the benefit of a college or university owned/operated by a governmental unit "also qualif[ies] as a publicly supported organization[] under section 170(b)(1)(A)(vi)? If the clause introducing the four bullet points *is to be kept,* some "reliance" on assertion of funder should be noted as a prerequisite.

b. Similar to my comment related to the Unusual Grants section, an explanation as to why the list is NOT to be filed with the Form 990 or 990-EZ is essential. Filers should be told

that if they are to include the list with names upon same, that it will be open for public inspection (assuming that is the case).

7. (page 14) Line 8: The directive here to NOT include on this line payments that result from activities of the organization that further its exempt purpose should include the notion of program-related investments. Perhaps the sentence there could have an addition:

… (*for example, dividends from a program-related equity investment, or interest returned to the organization from student loans it has made to further college attendance by low-income students, in accord with the organization's mission)*

8. (page 14) Line 9: A helpful addition to the first paragraph would be: "Filers may take this number from the 2008 Form 990-T taxable income line (related to those activities) *less* tax computed as due and payable on that Form." This has been the practice in line with the 2007 and prior Form's iteration. It is helpful that you close that paragraph with "See sections 512 and 513 and the applicable regulations". The next paragraph's directive to not have a net loss (only a zero) inputted is also helpful.

9. (page 15) fourth bullet point: Conduct of bingo games is only covered by section 513(f) if the conduct is *lawful*. Including that word in the text here would be helpful.

10. (page 15) fifth bullet point: While I applaud that a "qualified sponsorship payment" is here acknowledged as (at least potentially) falling outside of inclusion on the "contribution line" of Part VIII, that alternative characterization should be addressed here to avoid confusion or the perception of a mandate that such payments can <u>not</u> be considered contributions.

From: DeMeritte, Grant F
To: *TE/GE-EO-F990-Revision;
cc: Henning, Heidi E; Mullins, Bob;
Subject: Emailing: 990 draft instruction comments
Date: Tuesday, May 27, 2008 8:47:22 AM
Attachments: DSFile.pdf

Dear IRS Staff:

Attached please find the Howard Hughes Medical Institute's comments with regards to the draft instructions for the new form 990. Thank you.

Grant F. DeMeritte
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Comments on Form 990 Draft Instructions
Submitted via e-mail
May 27, 2008

Dear IRS Staff:

I write on behalf of the Howard Hughes Medical Institute (HHMI) in response to the proposed Form 990 instructions. As background, HHMI is a Section 501(c)(3) medical research organization that is directly engaged in research in collaboration with non-profit hospitals, universities, and research institutes around the country, as well as in its own biomedical research facility. In addition, HHMI makes grants, both in the U.S. and abroad, to expand and improve science education.

Our comments on the proposed Form 990 instructions are as follows:

In General: The IRS has done an excellent job in responding to many of the comments made by HHMI and others on the proposed revised Form 990. We appreciate the significant effort made by IRS staff on this project.

When the form and instructions are finalized, it would be helpful for the IRS to make them available for downloading in a single pdf or, at a minimum, as two pdfs with the core form and schedules in one pdf and the instructions in another. It is needlessly burdensome to make the documents available in a manner that requires organizations to download and open the form, each schedule and the instructions for the form and each schedule separately.

Core Form, Part III, Line 1: The instructions for this line indicate that if an organization's governing body has not formally adopted a mission statement, the organization should leave this line blank. We suggest that if an organization's charter or certificate of incorporation includes a specific description of the organization's purpose that is the equivalent of a mission statement, the organization be permitted to include that description in Line 1, even if it has not been formally adopted by the governing body.

Core Form, Part VII, Line 3, and Schedule J: The rules for reporting of former officers, trustees, and highest compensated employees are not clear. We understand that the objective is to require reporting for former officers, directors, trustees, key employees and highest compensated employees for only five years after their original status ends. This is consistent with Section 4958, which provides that former officers, directors, trustees, etc. retain their status as disqualified persons for five years. The instructions suggest that this is the intended reporting rule by providing in part VII, Line 3 (page 11 of 14, first bullet point under Line 3) that an officer or trustee will no longer need to be reported if he/she has not been an officer or trustee for five years in a row, and that a

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highest compensated employee will no longer need to be reported if he/or she drops off the highest compensated list for five years in a row. However, this is not mentioned in the chart on pages 12 and 13 of the Part VII, nor does it seem to be mentioned in the instructions for Part II of Schedule J The instructions should make the five year rule explicit in all the relevant places.

Core Form, Part IX, Line 18: In addition to requiring organizations to report the payment of travel or entertainment expenses for government officials, the instructions also appear to require organizations to report the payment of such expenses to family members of government officials, even though such payments are made to them in entirely separate capacities. As a practical matter, there is no way that organizations can collect such information and, even if they were able to do so, there is no reason to require them to report the payment of expenses that are not made on account of the government official's involvement with the organization.

For example, assume that an eminent scientist periodically sits on various HHMI peer review panels, and that the scientist's daughter-in-law decides to run for a local public office and is elected. As the instructions are written, HHMI would be required to report all the travel expenses we pay for the scientist to participate in our review panels, even though they have nothing to do with the daughter-in-law's holding of a public office. In order to do this reporting across the board we would have to gather a significant amount of information from many, many individuals about whether they are related to someone who holds public office. Because the section 4946(c) definition of who is a public official is quite broad as it applies to state and local governments, and narrower but more complex as it applies to the federal government, gathering the necessary information would be quite difficult and confusing.

We suggest that travel and entertainment for family members of public officials be reportable only if the family member is accompanying the public official. If you believe this is too loose a standard, we suggest requiring reporting of travel and entertainment for family members of public officials if (1) the family member is accompanying the public official or (2) the organization has no reasonable grounds for paying for the travel and entertainment of the family member other than the family member's relationship to the public official.

Schedule F: The instructions indicate that passive investments, and activities conducted by the organization directly or indirectly through a disregarded entity or through a joint venture taxed as a partnership, are reportable on Schedule F. This reporting would be duplicative of the more detailed reporting that is required on Schedule R. In addition, it would be very difficult to determine the expenditures allocable to investments in different regions, as Schedule F requires. For HHMI, investment decisions are typically made from the headquarters office in the U.S. and no meaningful information would result from an effort to allocate investment expenses on a region by region basis. We suggest that any investments or activities that are reported on Schedule R be excluded from Schedule F reporting.

Schedule I, Part II: We ask that the EIN of grantee organizations not be a required field due to the burden of collecting and reporting this information. In addition, such a requirement may raise privacy issues in cases where the EIN of an exempt organization is not otherwise publicly available (e.g., state and local agencies).

Schedule J, Part I, Line 3: We agree with the guidance in the instructions on when a compensation consultant can be considered "independent", and we appreciate your providing this guidance.

Schedule L, Part IV: As the instructions are written, if an interested person has any ownership interest in a partnership or professional corporation, the organization's transactions exceeding $10,000 must be reported. So, for example, if an organization's trustee is a partner in a law firm, transactions exceeding $10,000 are reportable even if the law firm is a very large one and the trustee's interest in it is quite small. We ask that you set a de minimis standard and require reporting only if the trustee's interest in the partnership or professional corporation exceeds 5%.

Respectfully submitted,

Grant DeMeritte, CPA
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From: Steve Givens
To: *TE/GE-EO-F990-Revision;
Date: Tuesday, May 27, 2008 9:05:28 AM

Thank you for the opportunity to comment on the new 990 form.
I am a CPA and work predominantly with nonprofit organizations.

Overall, I think the approach to the 990 is excellent, with one exception.

The new form requires the determination of whether board members are independent. I find the criteria to be arbitrary. For example, the payment for services of $10,000 or more to an individual who is a board member would conclude that board member to not be independent.
Who is to say whether it is $1,000 or $10,000 or $100,000, etc?

Most nonprofits in rural communities have board members with whom they do business. These organizations have excellent Conflict of Interest Policies and the outside business relationships are identified and managed appropriately.

The business relationship in many rural communities is necessary in that there are no other similar organizations in which they can do business. If there is another competing business, then a board member is penalized for being a board member if not allowed to offer their services to the nonprofit. If the independence determination remains on the 990, many board members may assume they are doing something wrong and leave the board. **I feel that nonprofits may have a very difficult time finding suitable board members.**

It is my belief that disclosing all board relationships and payments to be sufficient and allow the users of the 990 to draw their own conclusions as to whether board members are independent.

thanks again for the opportunity to comment.

Steve Givens, CPA

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From: Jennifer Hilliard
To: *TE/GE-EO-F990-Revision;
Subject: AAHSA Comments to Revised IRS Form 990 Instructions
Date: Tuesday, May 27, 2008 11:04:02 AM
Attachments: AAHSA Comments to IRS Form 990 Instructions.pdf

Attached you will find comments by the American Association of Homes and Services for the Aging to the revised IRS Form 990 Instructions.

Jennifer L. Hilliard, J.D., M.M.H.
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May 30, 2008

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Comments on the Draft Instructions for the Redesigned Form 990

To the Form 990 Redesign Team:

The American Association of Homes and Services for the Aging (AAHSA) appreciates the opportunity to submit feedback on the draft instructions for the redesigned Form 990 and schedules. The members of AAHSA (www.aahsa.org) help millions of individuals and their families every day through mission-driven, not-for-profit organizations dedicated to providing the services that people need, when they need them, in the place they call home. Our 5,700 member organizations, many of which have served their communities for generations, offer the continuum of aging services: adult day services, home health, community services, senior housing, assisted living residences, continuing care retirement communities and nursing homes. AAHSA's commitment is to create the future of aging services through quality people can trust.

AAHSA commends the Internal Revenue Service's (IRS) efforts to revise the Form 900 to facilitate accurate, complete, and consistent reporting by exempt organizations. AAHSA believes that the redesigned Form 990 is a step forward in achieving that goal.

AAHSA submits the following comments on the draft instructions for the redesigned Form 990.

Core Form

Part VI, Line 10

The requirement to distribute the Form 990 to the entire Board before filing may be cumbersome and unnecessary given the size of some boards. Moreover, some boards have certain subsets of the board or committees (finance, audit, etc.) that may be the appropriate place to review the Form 990 before its filing. Finally, distributing a substantially correct draft of the Form 990 (rather than a final and edited version for filing) to the reviewing body should be sufficient to answer "yes" to this question.

Part VII

This section defines a "key employee." AAHSA believes the new definition of key employee is too broad and the 5% threshold for what constitutes a key employee is too low. The IRS definition of a key employee (other than an officer, director, or trustee) in the instructions is one who:

> *(1) has responsibilities, powers or influence over the organization as a whole that is similar to those of officers, directors, or trustees; (2) manages a discrete segment or activity of the organization that represents 5% or more of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole; or (3) has or shares authority to control or determine 5% or more of the organization's capital expenditures, operating budget, or compensation for employees*.

Although the $150,000 compensation floor for reporting on key employees is appropriate, the expanded definition and 5% threshold is not.

A better definition of a key employee would be the definition set forth in the 2007 Form 990 instructions, which closely follows the definition in part (1) above and may include such positions as chief management and administrative officials if they have the ability to control the organization's activities, finances or both. If the IRS desires to expand the definition of key employees, it should nonetheless raise the 5% threshold substantially.

Finally, for consistency, the threshold for reporting former key employees should be brought up from $100,000 to $150,000 to match the figure for current key employees.

Schedule H: Hospitals

AAHSA and other organizations filed comments last year after the release of the Draft Form 990 expressing concerns about the definition of "hospital" and the applicability of Schedule H to long term care facilities. In the release of the Core Form in December 2007, the IRS appeared to agree with those concerns and limited the applicability of Schedule H to "hospitals" and did not include long term care facilities.

The definition of "hospital" used in the instructions for Schedule H and Part IV of the Core Form, however, is still problematic. Although the intent of the IRS is to limit the completion of Schedule H to "hospitals," a "hospital" is defined as a facility that is or required to be licensed or certified in its state as a hospital. States may define a

"hospital" differently and, most troubling, more broadly than the intent of the IRS. A state's definition may include diagnostic centers, treatment centers, nursing homes, and other entities under its definition of a hospital for licensing or certification purposes. We urge the IRS to provide a specific definition of "hospital" so as to not have the unnecessary or inconsistent filings from non-hospital entities of the Schedule H. A possible definition may focus on the type of service or care provided and/or the duration of stay. Allowing states to individually define a hospital will result in inconsistent and unintended filings.

Schedule K

Schedule K pertains to bond financing. AAHSA recommends that there be no reporting of refunding of pre-2003 bond issues. Such reporting would be unduly difficult and expensive to retrieve the information on older issues. Such an exception would ease the burden for some tax-exempt organizations that utilize bond financing.

AAHSA applauds the IRS in its efforts to redesign the Form 990 and thanks you for the opportunity to provide comments on the draft instructions for the redesigned Form 990. If you have questions, please contact Cory Kallheim at or Jennifer Hilliard.

Sincerely,

Cory Kallheim
Senior Attorney

Jennifer Hilliard
Public Policy Attorney

From:	JesterCPA
To:	*TE/GE-EO-F990-Revision;
Subject:	Part IX, Line 18, Payments.....for any Federal, state, or local public officials
Date:	Tuesday, May 27, 2008 11:24:43 AM

5/27/08

To Whom It May Concern:

You have elevated the reporting of payments or travel or entertainment expenses for federal, state or local public officials to a specific line item for the 2008 draft Form 990, Line 18 in Part IX, Statement of Functional Expenses. The instructions for this line are the same as they have been in 2007 and 2006. I repeat the instruction below:

> *a. Each separate expenditure relating to a government official or family member of such official that exceeds $200.*
> *b. Aggregate expenditures relating to a government official or family member of such official that exceed $1,000 for the year.*

Caution: Do not double count expenditures that are described in both a. and b. above.

I haven't understood this instruction in the last two years, and I don't understand it in the current draft instructions for the 2008 Form 990. I have asked the tax partners from two leading accounting firms in Northern Virginia at continuing education seminars to explain these instructions, and neither was able to do so. They were as mystified as I am.

First, must the payment be directly to the public official? For example, if an airfare, train fare or hotel room is purchased for a public official with an organizational credit card (American Express, for instance) or by an organizational check, would that be excluded because the payment is not made directly to

the public official? Or would it count because the payments are "related to" the public official?

Second, in determining "separate expenditures," would round-trip airfares count as two expenditures or one? Same thing with passage on a train, bus or ship.

Third, what does "each separate expenditure" mean? For example, if the following payments are made for a public official to attend a conference, how much would be reported on Line 18?

Hotel room	**$ 199.00**
Airfare to conference	**299.00**
Airfare for return flight	**299.00**
Meals	**199.00**
Taxi from airport to conference	**29.00**
Taxi to airport from conference	**29.00**
Total	**$1,054.00**

In this example, the only expenditures that exceed $200 are the two air fares. Consequently, is instruction (a) indicating that only $598 ($299 X 2 = $598) would be reported in Line 18? Or is the entire reimbursement of $1,054 reported on Line 18 because it exceeds $200?

Fourth, referencing the example above, if only $598 (the two airfares) would be reported on Line 18, what happens to the total of the remaining items, or $456? I presume the remaining items would be reported as miscellaneous expenses, unless they should exceed $1,000, the second threshold (b. above) for inclusion in Line 18. Suppose my example occurred three times. Then the airfares would be reported on Line 18 because they are individually more than $200, and the remaining items would also be included on Line 18 because collectively, over the course of the year,

they exceed the instruction (b) threshold of $1,000 ($456 X 3 reimbursements = $1,368). If the transaction occurred only twice, instead of three times, the items other than airfares would not be included in Line 18 because they do not exceed $1,000 ($456 X 2 = $912).

In short, these instructions are confusing and do not make sense, and also impose impossible recordkeeping requirements on nonprofit organizations, particularly small nonprofits that have small accounting staffs. Consequently, I would urge you to expand these instructions, and provide examples within the instructions as to how parts a. and b. of the instructions will be accomplished at a practical level.

Thank you for your attention to this matter.

Harvey E. Jester, CPA

Harvey E. Jester, CPA
2841 Woodlawn Avenue
Falls Church, Virginia 22042
***Phone*: 703-241-2418**
***Cell phone*: 703-475-4456**
***Fax line*: 703-536-1021**

From: Vanessa Dick
To: *TE/GE-EO-F990-Revision;
Subject: comments to draft instructions for Form 990
Date: Tuesday, May 27, 2008 2:04:39 PM
Attachments: 990 Instruction Comments.GWOB.doc

Attached are Grantmakers Without Border's comments to the draft instructions for the redesigned Form 990. Please let me know if you have any trouble opening the document.

Thanks.

Vanessa Dick
Advocacy Coordinator
Grantmakers Without Borders

240-988-2683

SAVE THE DATE!
Gw/oB's 8th annual conference
June 8-10, 2008 San Francisco, CA

May 27, 2008

Internal Revenue Service
1111 Constitution Ave., NW
Washington, D.C. 20224

Re: Comments to the Draft Instructions for the Redesigned Form 990

Dear Sir/Madam:

Grantmakers Without Borders ("Gw/oB") submits these comments on the draft instructions to the redesigned Form 990. Primarily focus is on Schedule F: Statement of Activities Outside the United States.

Background

Gw/oB is a philanthropic network dedicated to international social change philanthropy in the developing world. Gw/oB's membership, currently numbering 150 entities, includes private foundations, grantmaking public charities, individual donors with a significant commitment to international philanthropy, and philanthropic support organizations. Gw/oB's members make lifesaving grants to international grassroots organizations that target the root of economic, environmental, and social inequalities within their local communities. Grants range from support to children affected by HIV/AIDS, to reforestation projects in Brazil, to relief for victims of natural disasters.

Comments

The redesigned Form 990 includes a new Schedule F which asks for a statement of activities outside the United States. Gw/oB respects the IRS' need to monitor exempt organizations and their overseas activities, but asks that some changes be made to the instructions.

Schedule F must be afforded some degree of privacy and confidentiality in order to protect the work and lives of grantees that operate in hostile environments.

Many international grants are given to organizations and individuals that work in socially volatile areas of the world or within intolerant political environments. For example, Haitian human rights activists that denounce government corruption risk physical retaliation, Pakistani organizations that receive organizational support from the United States are sometimes targeted by fundamentalist populations, Indian women rights activists have been killed for their progressive campaigns, and organizations in Uzbekistan and Chechnya face the possibility of

being shut down with violence or government regulations because they support issues in opposition to their government's position.

Many international organizations rely on confidentiality to avoid the abusive practices of an oppressive government or population. Whenever public disclosure is a possibility, the grantee's safety must be a consideration. Unfortunately, Schedule F is a public document. Although Gw/oB respects the public's right to scrutinize the activities of tax exempt organizations, the safety of grantees should trump pubic disclosure laws.

Gw/oB applauds the IRS' decision to exclude the names of individuals who receive grants from Part III. We ask that this same precaution be permanently extended to the names of grantees within Part II, columns (a) and (b) (currently only applies in 2008).

The instructions for Schedule F, Part II, column (d) preclude the reporting of general support grants.

The instructions for column (d), Part II ask the reporting organization to "[d]escribe the purpose or ultimate use of the grant funds" using "specific descriptions such as school or hospital construction, payments for purchase of medical supplies or equipment, or of school books or schools supplies, provisions of clothing, etc." No guidance is given for legally permissible general support grants which can be hard to qualify in specific terms.

The instructions for Schedule F, Part II, Line 2 fail to preempt any misconception about the legality of grantmaking public charities supporting organizations not recognized within their foreign country or equivalent to a 501(c)(3) public charity.

Schedule F, Part II, Line 2 asks the reporting organization to list the number of grants given to foreign organizations or entities that are recognized as charities by the foreign country in which they reside or counsel has provided a section 501(c)(3) equivalency letter. It is easy to imagine a scenario whereby a reporting organization or member of the general public misconstrues this question to imply that it is illegal to support organizations not registered in their foreign country or found to be 501(c)(3) equivalent.

Gw/oB asks that the IRS include a sentence in the instructions explaining that in most other countries the regulatory structure for charitable organizations is not easily compatible to the U.S. system, therefore many foreign organizations are not recognized by their foreign government. In addition, U.S. tax law does not require grantmaking public charities to secure a 501(c)(3) equivalency letter from counsel. Furthermore, nothing within federal law prevents grantmaking public charities from supporting these types of organizations.

Why does the definition for "foreign individual" include U.S. citizens living outside the U.S.?

Gw/oB has received questions from U.S. citizens living abroad asking why they are considered "foreign individuals" in the redesigned Form 990. Gw/oB hopes the IRS can provide guidance on why this is true.

Conclusion

Gw/oB appreciates this opportunity to respond the redesigned Form 990. Revisions are needed within the instructions to preserve the vital work of grantmaking public charities that give internationally. The names of grantee organizations should be permanently excluded from Schedule F. Schedule F, Part II, column (d) must allow for the reporting of general support grants. The instructions for Schedule F, Part II, Line 2 should preempt any misconception about the legality of grantmaking public charities supporting organizations not recognized within their foreign country or equivalent to a 501(c)(3) public charity.

Sincerely,

John Harvey
Executive Director
Grantmakers Without Borders

From: Shirlon Carroll
To: *TE/GE-EO-F990-Revision;
Subject: Comments on Form 990 Draft Instructions
Date: Wednesday, May 28, 2008 3:38:36 PM

Dear Sirs:

Below are my comments on the Form 990 Draft Instructions:

- Core Form 990 Part VII page 10 of 14. The row of the table labeled "Taxable distributions from qualified retirement plan (reported on Form 1099-R)" does not have a mark in any column for this row. Is this an oversight or are these types of payments excluded from reporting?

- Core Form 990 Part VI page 2 of 9. Is there a reasonable limit to the extent the organization should go to ascertain the relationships? Is an annual survey of the Board to determine this information considered acceptable?

  An exception should be available for transactions that are in the ordinary course of business. For example, if someone on your Board is also on the Board of AT&T. Should the payment of phone services be includable?

- Core Form 990 Part IX page 22 of 27. Should Pledges Receivable from officers, directors, and other disqualified persons be reported on Line 3 or Line 5? Would there be any additional disclosure needed if included on Line 3?

- Core Form 990 Item M. How should an organization respond that was Chartered by Congress?

- Schedule J page 10 of 13. Second paragraph, last sentence should be “even though” not “event though”.

- Core Form 990 Part IV line 14. Do offices outside of the US include Puerto Rico or is the definition of outside the US the same as that used for Schedule F?

Shirlon Carroll

From: David McClure
To: *TE/GE-EO-F990-Revision;
Subject: Comments on Schedule 990 and Schedule H Instructions
Date: Wednesday, May 28, 2008 4:38:22 PM
Attachments: Final Comment Letter on IRS Form 990 and Schedule H instructions 5-28-08.doc

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Attached are the requested comments from the Tennessee Hospital Association on the Schedule 990 and Schedule H instructions.

David McClure
Vice President of Finance
Tennessee Hospital Association
500 Interstate Blvd South
Nashville, TN 37210
Direct phone: 615-401-7465
Toll free: 800-258-9541
Fax: 615-242-4803

May 27, 2008

By Electronic Filing

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

RE: Comments on Draft Form 990, Schedule H, and Selected Other Instructions

The Tennessee Hospital Association (THA), on behalf of its more than 200 healthcare facilities, including hospitals, skilled nursing facilities, home care agencies, nursing homes, and health-related agencies and businesses, and over 2,000 employees of member healthcare institutions, such as administrators, board members, nurses and many other healthcare professionals, appreciates the opportunity to submit comments on the draft instructions for Form 990 and Schedule H for hospitals.

We appreciate the work the Internal Revenue Service (IRS) has put into the new form and schedules and its solicitation of the hospital community in the early stages of the design of these forms and instructions. We particularly want to acknowledge the efforts of the IRS in responding too many of our recommendations in an earlier stage in the form development process.

Tennessee hospitals support the community benefit standard, which requires the promotion of health in accordance with community needs in the absence of private benefit. We support the IRS goals to enhance transparency, promote compliance, and minimize the reporting burden however we believe organizations should be required to only provide information pertinent to those community benefits.

Schedule H
We appreciate the IRS stated desire to minimize burden and we understand this does not mean reduce burden. A major concern is the timing for completing and filing the report. Form 990 is due on the 15th day of the 5th month following the end of the entity's fiscal year. Many of the references in the form and instructions appear to promote reconciliation with the Medicare cost report which is due within 5 months of the end of the fiscal year. We are concerned this expanded 990 burden will create difficulty in meeting both deadlines.

Schedule H - Part I - Charity Care and Certain Other Community Benefits
To calculate amounts to be included in the charity care and other community benefit table, the draft instructions provide that organizations may use the worksheets provided with the instructions or other "equivalent documentation" that substantiates the information reported consistent with the methodology required in the worksheets. Some THA member hospitals have developed alternative methods to capture the needed information. THA urges the IRS to clarify in the instructions that such alternative methods used by health care organizations is

considered “other equivalent documentation” whose use does not require an organization to duplicate effort by capturing equivalent information on the worksheets.

Schedule H, Part I, Line 7(a) – Worksheet 1, Charity Care at Cost, Line 4:
The Service specifically has requested comments on how filing organizations should report the cost of Medicaid and provider taxes (Worksheet 1, Line 4) and revenue from uncompensated care pools or programs, including Medicaid Disproportionate Share Hospital (DSH) funds (Worksheet 1, Line 6), as costs and revenues associated with charity care (Worksheet 1) or with Medicaid and other means tested government programs (Worksheet 3). The wording in the instructions for Worksheet 1, Line 4, is confusing, and results in a narrower-than-intended interpretation of what hospitals should report. The instruction indicate payments received from the DSH program in the “organization’s home state” are intended to offset the cost of charity care. Some hospitals may receive such payments from bordering states. Therefore, we believe this is more restrictive than necessary, and the term “organization’s home state” should be deleted.

Schedule H - Part III – Section A – Bad Debt Expense, Line 1
THA commends the IRS for clarifying in the draft instruction that hospitals are not required to adopt or rely on the Healthcare Financial Management Association’s Statement No. 15. Statement 15 which “provides instructions for recordkeeping, valuation, and disclosure for bad debts” is a very detailed fourteen page document. THA recommends the IRS provide further instruction and examples of what constitutes a simple “yes” or “no” answer.

Schedule H - Part III – Section A – Bad Debt Expense, Line 4
Line 4 requires an organization to provide the text of the footnote to the organization’s financial statements that describes bad debt expense. The draft instructions further provide that footnotes related to “accounts receivable,” “allowance for doubtful accounts,” or similar designations may satisfy this reporting requirement. We understand that many health care organizations’ financial statements do not contain footnotes relating to bad debt expense or any noted or similar designations. THA suggests that the IRS include language in the draft instructions to this question to clarify that, if this is the case, organizations are not required to create footnotes in financial statements to satisfy this question.

Schedule H - Part III – Section B – Medicare
The Service has failed to provide any guidance to hospitals of what it means by Medicare. We recommend that Medicare underpayments constitute a community benefit and that should include underpayments from Medicare managed care programs such as Medicare Advantage.

If you have any further questions or need any additional information on how the revisions to Form 990 and its schedules will impact the hospital community, please do not hesitate to contact THA at 615-256-8240.

Sincerely,

David McClure,
THA Vice President of Finance

cc: Rick Pollack, AHA, Executive Vice President

From:	Rixen,Steven J
To:	*TE/GE-EO-F990-Revision;
cc:	Goodman,Edward N; Perrin,Cidette S.; kathleen.nilles@hklaw.com;
Subject:	VHA Inc."s Comments on the Draft Instructions for Form 990 and Schedule H
Date:	Wednesday, May 28, 2008 5:19:23 PM
Attachments:	1-COMMENTS on DRAFT INSTRUCTIONS for FORM 990 and Schedule H.doc

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Please find attached VHA Inc.'s Comments on the Draft Instructions for Form 990 and Schedule H.

Thank you,

Steve Rixen (On behalf of Edward N. Goodman)
VHA Inc.
901 New York Ave NW
Suite 510 East
Washington,DC 20001

Phone: 202-354-2601
Fax: 202-354-2605

May 28, 2008

BY ELECTRONIC FILING (e-mail to)

Internal Revenue Service
Draft Form 990 Instructions, SE.T:EO
1111 Constitution Avenue N.W.
Washington, D.C. 20224

RE: COMMENTS on DRAFT INSTRUCTIONS for FORM 990 and Schedule H

VHA Inc. (VHA) appreciates this opportunity to submit comments on the Form 990 Draft Instructions, including Schedule H.

Founded in 1977, VHA is dedicated to the success of nonprofit, community-based health care. Based in Irving, Texas, VHA is a national health care alliance that serves more than 1,400 not-for-profit hospitals and more than 23,000 non-acute health care organizations nationwide. VHA helps its members deliver safe, effective and cost-efficient health care through both national and local support. VHA has 16 regional offices covering 47 states, as well as an office in Washington, D.C.

As one of the participants in a Schedule H stakeholders group convened to advise the Internal Revenue Service (IRS) on hospital industry issues, VHA is keenly aware of both the size of the project undertaken by the IRS, and the spirit of openness and cooperation with which the IRS has approached its task. VHA commends the IRS for soliciting the views of and listening to a broad spectrum of hospital community representatives in the course of drafting the Schedule H and other Form 990 Instructions.

The comments below highlight a number of issues with respect to which VHA agrees with the proposed IRS approach in the Draft Instructions. The comments also raise concerns about a few other areas that, in VHA's view, still need further work or clarification. In addition, VHA continues to be deeply concerned about the massive compliance burden that the new Form 990 and Schedule H will impose on tax-exempt organizations and their staffs.

1. Schedule H Definition of Hospital and Hospital Facility

The Schedule H Instructions define a "hospital" (for purposes of determining who must file the Schedule H) as a facility that is, *or is required to be*, licensed or certified in its state as a hospital. VHA understands that the inclusion of the alternative test referencing whether a facility is "required to be" licensed is intended to avoid subordinating federal tax law to the taxpayer's compliance with state and local laws. However, VHA is concerned that many hospitals may be confused by the inclusion of the phrase "or is required to be" in the definition. VHA recommends that the IRS streamline the Draft Instructions by removing the phrase "or is required to be" from the definition.

VHA concurs with the IRS that it is appropriate to require Schedule H filing by hospitals that are owned by section 501(c)(3) organizations through joint ventures or disregarded entities. This will put all hospitals that are deriving full or partial benefits from tax exemption on a level playing field.

VHA Inc. 220 E Las Colinas Blvd. Irving, TX 75039
TEL 972.830.0000 FAX 972.830.0000 www.vha.com

VHA further concurs with the inclusion of data from non-hospital medical facilities that are owned by a Schedule H filing hospital–either directly or through a joint venture or disregarded entity (e.g., a single member LLC). This will allow hospitals that operate integrated health care delivery systems to include community benefit and charity care data from the clinics, ambulatory care centers and other similar facilities that they own and/or operate. Such a broad approach will underscore the fact that community benefit and charity care are provided by nonprofit community hospitals in a variety of settings, not just through the hospital's inpatient facilities.

VHA does not concur with the proposed exclusion of foreign hospital data on the Schedule H (unless the hospital is organized as a partnership or disregarded entity). VHA aligns itself with the recommendation of the American Hospital Association (AHA) on this point—that a U.S. hospital filing Schedule H should be allowed to report data from a foreign hospital if it is operated as an "integral part" of the filing organization.

Furthermore, VHA also believes that all Schedule H-filing hospitals should be able to report community benefit data from their related U.S. foundations. In the case of a health care foundation (like that of a foreign hospital), the related corporation will not likely be able to file a Schedule H on its own (since it is not a licensed hospital). Thus, there will be no double-counting of community benefit expenditures. The primary reason most hospital foundations are established is to support the hospital in its community benefit activities. However, some hospital foundation grants may go directly or indirectly to community groups. The Draft Instructions should allow all of the foundation's community benefit expenditures to be reflected on the Schedule H of the hospital it supports (or, in the case of a health system foundation, divided proportionately among the several hospitals it supports). To do otherwise will likely result in many hospital foundations having to restructure in a manner that may not be optimal for purposes of either charitable fundraising or hospital operations.

2. Schedule H—Community Benefit Table and Related Worksheets

VHA strongly supports the IRS' decision not to require that grants restricted for community benefit activities be deducted from the grantee organization’s gross community benefit expense as “directly offsetting revenue” in determining its "net community benefit" expense. VHA does not believe that charitable funding sources—whether restricted or unrestricted—should be treated as “directly offsetting revenues" in computing charity care. This is particularly important in view of the following:

- Part I, Line 7 of Schedule H mandates the calculation of a percentage for every specified component of community benefit (including charity care) as well as an aggregate charity care percentage and an aggregate community benefit percentage.
- The percentages are each derived by dividing the hospital's "net community benefit expense" by its total functional expenses.
- If charitable funding were to cause a reduction in the amount of such "net community benefit expense," a hospital receiving such funding would see its charity care and/or community benefit percentages measurably reduced.

Imposing an artificially depressed charity care percentage on those hospitals generating grants for community benefits would clearly send the wrong message.

Because it appropriately recognizes the contributions of all hospitals providing charity care, particularly those that have forged effective philanthropic partnerships to enable them to more fully respond to community needs, the IRS' policy decision on the treatment of grant-funded community benefits is the right one. It is also consistent with the financial accounting approach to charity care from the Healthcare Financial Management Association (HFMA) Principles & Practices Board

Statement on Valuation of Charity Care by Health Care Providers (commonly known as "Statement 15" and issued December 2006).

3. Schedule H--Definition of Subsidized Health Service

The Draft Instructions provide overly restrictive examples in connection with the term "subsidized health service." Such services are an important component of community benefit provided by virtually all tax-exempt community hospitals. Subsidized health services include health services, such as neonatal intensive care and burn units, that generally are not provided by for-profit medical providers because they consistently operate at a loss. While VHA agrees with the Draft Instructions' definition of the term "subsidized health service" as a loss-generating health care service that meets an identified community need, the Draft Instructions go on to state that such services generally exclude "ancillary services (that support inpatient and ambulatory programs) such as anesthesiology, radiology, laboratory departments, physician clinic services and skilled nursing facilities."

VHA does not agree that skilled nursing facilities and physician clinic services should be excluded on a *per se* basis or that such programs are appropriately characterized as "ancillary services" that merely support inpatient and ambulatory programs. Rather, their treatment should depend on the facts and circumstances of the community being served and the way in which the skilled nursing facility or physician clinic service is operated. If skilled nursing facilities or physician clinics are services that meet an identified community need and they are operated at a loss consistent with the definition of a "subsidized health service," they should be counted as a separate line item for community benefit reporting purposes.

4. Schedule H—Definition of Research for Community Benefit Purposes

The Draft Instructions define the term "research" for purposes of reporting the net cost of Research for community benefit purposes as follows:

> any study or investigation that receives funding from a tax-exempt or governmental entity of which the goal is to generate generalizable knowledge that is made available to the public….

VHA suggests that the source of funding for the research should not dictate whether it counts as "research" for community benefit purposes. Even if the research is privately funded (e.g., by a corporate or individual grant), it is quite possible for it to meet the "generalizable knowledge" test. For example, VHA is aware of many instances in which clinical research into the nature and treatment of a particular disease has been funded by an individual donor to honor the memory of a stricken or deceased family member. VHA joins in the comments of the Association of American Medical Colleges (AAMC) on this point and urges the IRS to revise the definition accordingly.

5. Core Form 990 and Schedules H, J and L—Definition of Key Employee

The definition of a key employee comes into play for purposes of the Core Form 990 and several of the individual schedules.

- On Part VII of the Core Form (Section A, Line 1a), the organization must list all of its current officers, directors, trustees, and key employees regardless of the amount of compensation. (The instructions clarify, however, that the definition of "key employee" excludes anyone whose "reportable compensation" from the organization and related organizations does not exceed $150,000.) In addition to listing by name any "key

employees" with income above $150,000, the filing organization must specify the key employee's job title, average hours per week, the key employee's status, "reportable compensation" (from the W-2 or 1099 Forms) from the organization, reportable compensation from related organizations, and must also estimate the amount of "other compensation" from both the organization and related organizations.

- On Part IV of Schedule H, the organization must list any joint venture or other separate entity of which the hospital is a partner or shareholder, or any management company (1) for which current officers, directors, trustees, or key employees of the organization and physicians who have staff privileges with one or more of the organization's hospitals, own in the aggregate more than 10% of the share of profits of such partnership or stock of such corporation, and (2) that (a) provides management services used by the organization in its provision of medical care, (b) provides medical care, or (c) owns or provides real, tangible personal, or intangible property used by the organization or by others to provide medical care.

- On Part I of Schedule J, the organization must respond to a number of inquiries about the compensation and benefits provided to any key employee listed in Part VII, Section A, Line 1a, including whether the organization provides them with first class or charter travel, travel for companions, tax indemnification and gross-up payments, a discretionary spending account, a housing allowance or residence, health or social club dues, or personal services (e.g., chauffeur, chef), any severance or change-in-control payments, and any payment of incentive compensation, as well as providing in chart format a breakdown of the key employee's compensation into base compensation, bonus and incentive compensation, other compensation, deferred compensation, and nontaxable benefits.

- On Part II, Part III and Part IV of Schedule L, the organization must provide a significant amount of information about any loans made to or from key employees (as well as other "interested persons" such as directors, officers, etc.), any grants or assistance benefiting key employees, and any direct or indirect business transactions (with a reporting threshold of $10,000) entered into with key employees.

The definition of a "key employee" that triggers all of the above reporting is found in Part VII of the Core Form Draft Instructions and reads as follows:

> For purposes of Form 990 reporting, a key employee is an employee of the organization (other than an officer, director or trustee) who
> (1) has responsibilities, powers or influence over the organization as a whole that is similar to those of officers, directors or trustees; [or]
> (2) manages a discrete segment or activity of the organization that represents 5% or more of the activities, assets, income, or expenses of the organization as compared to the organization as a whole; or
> (3) has or shares authority to control or determine 5% or more of the organization's capital expenditures, operating budget, or compensation for employees.

The Draft Instructions further specify that even an individual who is not an employee of the organization may be treated as a "key employee" if he or she "serves as a director or similar fiduciary of a disregarded entity of the organization (e.g., a single member LLC owned by the exempt organization) and otherwise meets the standards of a key employee set forth above." Examples included in the Draft Instructions suggest that an employed hospital radiologist would

not likely qualify as a "key employee," but the head of the hospital's Cardiology Department would so qualify. These examples are appropriate, but the definition itself raises more questions than it answers.

VHA is extremely concerned that under the definition of "key employee" in the Draft Instructions many hospital employees who have very little influence over the hospital that employs them will technically meet one of the three prongs and be required to be treated as a so-called "key employee." [1] For example, under the second alternative prong of the definition, someone who manages a discrete segment of the organization (which is defined as involving as little as 5% of the organization's activities, assets, income *or expenses*) will be treated as a key employee—even if that segment represents a cost center (e.g., building or equipment maintenance) whose managers have little control or influence over the organization. As a further example, under the third alternative prong, someone who "shares" authority to determine as little as 5% of the organization's capital expenditures, operating budget, or employee compensation (e.g., a human resources professional who reports to the hospital's senior human resources executive) would have to be designated as a key employee.

Given the significant burden that "key employee" reporting will entail, VHA strongly recommends that the definition of key employee be changed to provide (a) a much higher threshold than 5% and (b) a much higher standard of organizational control and influence. In VHA's view, if the test for "key employees" results in more than a small number of executives and senior managers being designated as such, the reporting burden associated with this classification will be completely out of proportion to the tax compliance goals it purports to serve.

6. Core Form—Part IV and Schedule C – Political Campaign Activity

VHA is concerned that in an effort to define what constitutes "indirect" political campaign activity for purposes of the Form 990 and Schedule C, the IRS is imposing a new substantive standard on Form 990 filers that has not been announced or adequately explained in any prior IRS guidance. The new rule will not only catch many exempt organizations by surprise, it also asks them for information they may have no legal right to obtain and about activities or expenditures that they may have no legal right to control.

The specific trigger question relating to the completion of Schedule C (Political Campaign and Lobbying Activities) is Part IV of the Core Form, line 3, which states as follows: "Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office? If "yes," complete Schedule C."

This trigger question is explained in the following paragraph in the Draft Instructions:

> Line 3. Political Campaign Activities. All organizations must answer this question even if they are not subject to a prohibition against political campaign intervention. Answer "yes" even if the activity is conducted indirectly through a disregarded entity or a joint venture or other arrangement that is taxed as a partnership and in which the organization is an owner.

The Draft Instructions to Schedule C further elaborate on this point as follows:

> If an organization has an ownership interest in a joint venture taxed as a partnership that conducts political campaign or

[1] Note that the "prongs" referred to above are alternative tests only one of which needs to be satisfied for the individual to be treated as a key employee for the Form 990 various purposes.

> lobbying activities, the organization must report its share of such activity on Schedule C.

Under these proposed new rules, even if a hospital owns as little as 1% of a joint venture that made political campaign contributions or engaged in political campaign activity, the exempt hospital would still apparently be required to report such activity on its Form 990 and related Schedule C. As a result, the hospital's federal tax exemption would be placed in question.

VHA is not aware of any previous IRS guidance putting hospitals on notice that in setting up joint ventures, they could be risking attribution of political campaign activity (and thus jeopardize their exempt status). Moreover, by virtue of the fact that the Draft Instructions refer to *any* level of ownership interest, and not just situations where the exempt hospital is the *controlling* or *majority* owner, the IRS is asking hospitals about activity that they currently may have no legal right to restrain. In light of such circumstances, VHA requests a sufficient delay in the implementation and enforcement of this new reporting rule so that hospitals and other 501(c)(3) organizations can either restructure or withdraw from partnership and other joint venture arrangements in order to adequately protect their exempt status.

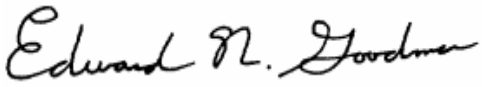
7. Core Form—Part VI (Governance, Management and Disclosure)

VHA compliments the IRS on the generally helpful instructions provided in connection with this section and anticipates that most hospitals will proactively update their existing governance policies and practices in order to operate in a manner that is consistent with IRS guidance. Most hospitals are already doing so and will consider this section to be a helpful reminder of best practices in the area of nonprofit corporate governance.

****

Because of the length of the Draft Instructions and number of potential issues, there may be additional issues on which (a) the IRS would like to seek input from VHA or other members of the hospital community, or (b) VHA may need further guidance in order to better inform its members. We look forward to continuing the open door policy that the IRS has initiated. If VHA can be of assistance in any way, please do not hesitate to contact VHA's Director of Government Relations Cidette Perrin at (202) 354-2608.

Sincerely,



Edward N. Goodman
Vice President, Public Policy

From: Shortill, Kevin
To: *TE/GE-EO-F990-Revision;
Subject: Comments on Revised Draft Form 990 Instructions
Date: Wednesday, May 28, 2008 6:53:15 PM

May 28, 2008

BY E-MAIL

Ronald J. Schultz, Esq.

Senior Technical Advisor to the Commissioner, TE/GE

Internal Revenue Service

1111 Constitution Avenue, NW

Washington, DC 20224

Attn: SE:T:EO, Form 990 Redesign

Re: Revised Draft Form 990 Instructions

Dear Mr. Schultz:

We respectfully submit the following comments in connection with the revised draft Form 990 Instructions published on April 7, 2008. In this letter we propose three important changes to the draft Instructions. Two of these proposals address situations in which compensation paid by *related* organizations should not be required to be reported on the reporting organization's Form 990. The third concerns the new proposed definition of "key employee."

In our view, incorporating these changes in the final Instructions will clarify and remedy inequitable provisions in the draft Instructions *without* diminishing the IRS's ability to collect essential information from exempt entities that will allow it to effectively enforce the internal revenue laws.

Volunteer Exception for Compensation Paid by Related Organizations

We are pleased that a "volunteer exception" has been included in the revised draft Instructions. However, we believe that the exception should not be limited, as it is in the current draft Instructions, solely to situations in which the related entity is a for-profit organization. For the reasons discussed below, we urge the IRS to expand the description of the "volunteer exception" to include individuals who volunteer for a reporting organization and who receive compensation from a related *tax-exempt* organization.

There are important considerations that support the volunteer exception. Talented and committed individuals agree to volunteer for exempt entities because they are eager to further those organizations' missions. These individuals are by no means drawn only from for-profit organizations. Moreover, these individuals might understandably be less eager, and perhaps reluctant, to volunteer if they knew that their compensation from their employers, whether exempt or for-profit, would be reported on the Form 990 of the organization for which they might volunteer. Reporting and disclosure of compensation paid to individuals by related organizations would thus have a deleterious effect on exempt entities' ability to attract qualified individuals to serve as volunteer officers or directors, with no apparent offsetting benefit to the IRS or the public.

We are not aware of any sound policy reason for limiting the volunteer exception to for-profit entities. If the reporting entity itself is not paying any compensation to the individual (which is necessarily the case if the individual is a volunteer), then by definition the reporting organization's assets cannot be said to inure to the individual's benefit or more generally to have been diverted for an improper use. In these circumstances, there is no reason that the IRS (or the public) should need to know what amounts a *related* organization might be paying to the volunteer. This information is not pertinent to enforcing the internal revenue laws applicable to the reporting organization, and this is the case regardless of whether the related employing entity is another exempt entity or a for-profit entity. To the extent this information may ever be relevant, it will be

reported on the related exempt entity's Form 990. Absent such reporting, however, the volunteer exception as currently proposed would lead to an absurd result – an individual's compensation that is not required to be disclosed by his or her own (exempt) employer would have to be disclosed by an organization for which he or she only volunteers.

Accordingly, an organization should not be required to report compensation paid by a related organization (whether exempt or for-profit) to a person who provides services to an exempt organization solely on a volunteer basis – except in limited circumstances where there is potential for abuse. Thus, we agree with the limitation contained in the revised draft Instructions that the volunteer exception should not apply where the related organization is owned or controlled by the reporting organization or one or more related tax-exempt organizations.

For all the foregoing reasons, we propose that the phrase "is for a for-profit organization and" be deleted from the volunteer exception in the final Instructions.

Transition Relief for *Former* Officers, Key Employees, and Five Highest Compensated Employees

We strongly encourage the IRS to provide transition relief with respect to the new requirement that exempt organizations report compensation paid by *related* organizations to *former* officers, key employees, and the five highest compensated employees. Specifically, this obligation should be implemented prospectively only, rather than retrospectively. (This transition relief is particularly necessary if the IRS does not extend the volunteer exception as proposed above.)

An example will illuminate why transition relief is necessary: If the new Form 990 is implemented in its current version, as is expected, an individual who begins serving as an officer of a tax-exempt entity in 2008 or later will be listed as a *former* officer on the entity's Form 990 after his or her service ends if he or she is compensated by either the exempt organization or a related organization. Such an individual, when accepting his or her election or appointment as officer, would have been, or arguably should have been, aware of the reporting requirements under the redesigned Form 990 regarding compensation paid by related organizations. If he or she were uncomfortable with the expanded reporting requirements (and the resulting public disclosure of compensation), he or she could have refused the appointment. However, an individual who served as an officer of an exempt entity but resigned that post *before* a tax year beginning in 2008 should not have to have his or her post-resignation compensation paid by a related organization reported and disclosed. This individual could not have considered, or even conceived of, the possibility of compensation paid by a related organization being revealed after his or her resignation.

More generally, it makes no sense to treat former officers, key employees, and the five highest compensated employees differently – and less favorably – than former directors. Under the revised draft Instructions, compensation paid to former directors by related organizations needs to be disclosed only if the compensation is received in the individual's capacity as a former director. There is no such qualification regarding compensation paid to former officers and former employees. We would support a modification to the revised draft Instructions to require reporting and disclosure of compensation paid by related entities to former officers and employees only where the compensation is received in such individual's capacity as a former officer or employee.

Finally, the clear implication of the new reporting requirement is that the disclosure of compensation paid by related entities to former officers, key employees, and the five highest compensated employees – even when the compensation does not relate to an employee's service to the reporting organization *at all* – is somehow necessary to the effective administration of the internal revenue laws. This is puzzling. We question whether such information is ever necessary or relevant. Moreover, except perhaps where the reporting organization controls the other organization, the reporting organization will not know, or be able to verify, the amount of compensation being paid by the related entity. For these reasons, the new reporting requirement, as drafted, is both overbroad and impractical.

At the very least, with respect to officers, key employees, and the five highest compensated employees serving solely before tax years beginning in 2008, it would be manifestly unfair to impose a new compensation disclosure obligation "after the fact." Implementing the new reporting requirement prospectively would avoid this inequity.

Definition of "Key Employee"

The new definition of "key employee" contained in the revised draft Instructions is exceptionally broad and will be significantly more difficult to apply than the previous definition, with no obvious benefit to the IRS (or

the public). We request that the IRS return to the previous definition of "key employee."

The revised draft Instructions define "key employee" to include all employees (other than directors and officers) who (a) manage a segment or activity of the organization that represents 5% or more of the activities, assets, income, or expenses of the organization, or (b) have or share authority to control 5% or more of the capital expenditures, operating budget, or employee compensation of an organization. Thus, in order to comply with this definition, each exempt organization will have to create a system by which it can annually assess and measure, with significant precision, each employee's respective managerial and control authority in 7 different categories. Developing, analyzing, sorting, and maintaining the type of list required under the revised draft Instructions – every year – would create a significant and unnecessary administrative burden on reporting organizations, and would disclose the compensation information of employees who previously had no reasonable expectation of such disclosure.

Moreover, because the threshold is a de minimis 5%, it is theoretically possible for an organization to have *20 employees* (or more, given the "shared authority" language) in any of the 7 categories. There presumably will be overlap among the categories in many cases, of course, but in the worst-case scenario an exempt organization would have to report compensation of *140* (or more) employees (in addition to disclosing the compensation of directors, officers, and the five highest compensated employees). Even for larger organizations that fall short of the theoretical worst case, this will likely include a surprisingly large number of employees, many of whom are rank and file employees (a characterization that is not inconsistent with having the minimal 5% authority). Smaller organizations may find that their entire staff will be included. It is not credible to think that digging down this far into an organization chart is necessary to enforce the internal revenue laws.

Therefore, we urge the IRS to retain the definition of "key employee" found in the 2007 Instructions.

* * * *

Thank you, in advance, for your consideration of these comments. We would welcome the opportunity to discuss our comments with you at any time.

Sincerely,

Jeremy D. Spector

Kevin Shortill

H. Lillian Vogl

Fn. 1: Indeed, because the new Form 990 extends the requirement to report compensation for the five highest compensated employees to all tax-exempt entities, and not just charities as under the previous Form 990, the IRS has already assured itself of receiving the information relevant to identifying potentially excessive compensation, without the difficult calculus that would be required under the new definition.

Under IRS standards of professional practice, certain tax advice must meet requirements as to form and substance. To assure compliance with these standards, we disclose to you that this communication is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties.

Kevin Shortill **| Covington & Burling LLP**

1201 Pennsylvania Avenue N.W.

Washington, D.C. 20004-2401

From:	Tiffany Aurora
To:	*TE/GE-EO-F990-Revision;
cc:	Marion Gorton; Erin Skene-Pratt; Tiffany Aurora;
Subject:	Comments on IRS Instructions for Form 990
Date:	Thursday, May 29, 2008 9:10:03 AM
Attachments:	Comments_on_IRS_990_Instructions.pdf

To Whom It May Concern,

Attached are comments from the Michigan Nonprofit Association on the IRS Instructions for the Form 990. If you have any difficulty opening the attachment, please let me know.

Tiffany Aurora
Michigan Nonprofit Association

Michigan Nonprofit Association

May 29, 2008

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Ave., NW.
Washington, DC 20224

To Whom It May Concern:

Thank you for providing the opportunity to comment on the 2008 990 Draft Instructions that were released April 7, 2008. Michigan Nonprofit Association (MNA) is pleased to take advantage of this opportunity by providing comments found on the following pages.

MNA is an organization with well over 1,000 members, nearly all of which are nonprofit organizations, from very large associations to small all-volunteer community charities. We are pleased to be able to represent the interests of our nonprofit members by submitting our concerns and suggesting alterations in the Draft Instructions.

Please contact me if we can provide further assistance, or if you have any questions regarding our comments.

Sincerely,

Erin Skene-Pratt
Public Policy Director

COMMENTS ON DRAFT IRS INSTRUCTIONS FOR FORM 990
Released April 7, 2008

General Comments

- Either the Glossary should be made a part of the Core Form Instructions to ensure everyone is aware of its existence and has easy access to it, or references should be made to the Glossary when included terms are used in the forms and instructions, with clear guidance to locate the Glossary.

- The Glossary definitions are far better than in the initial draft. However, the IRS should again obtain input after the definitions have been used for 12 to 18 months to determine if they are clear and effective or if definitions of additional terms are necessary.

- At all times throughout the Core Form 990, the Schedules and all Instructions, the IRS should ensure consistency. If comments or instructions on the forms conflict with instructions for that form, then the either the form or instructions should be changed.

- The IRS could provide a valuable service by providing a website where all regulations cited in the forms and instructions would be available in a pdf format for downloading and printing.

Core Form

Completing the Heading of Form 990

Item G. Enter gross receipts. The instructions for obtaining the amount to enter into this item are very confusing, if not inaccurate. Reinforcement that this item should be completed only at a later time might be helpful, and then the instructions for which number to enter could be greatly simplified by referring to net values, rather than sub-items of Part VIII.

Part 1, Summary

Line 6, number of volunteers. This number could be more useful if organizations also estimated how many total hours of service were provided by their volunteers.

Lines 8-19, Revenue & Expenses. It is unclear whether an organization that filed Form 990-EZ or the 990-N for the prior year is to leave the “Prior Year” column blank. The Instructions reference only lines from the Form 990 to provide numbers for the prior year.

Part IV, Checklist of Required Schedules

Lines 14a, 14b & 15, activities or assistance outside the United States. Expand the instructions to ensure organizations know that Line 15 operates independently to trigger filing of Schedule F, regardless of the response on Line 14a. So, if the organization has only provided grants to overseas organizations of more than $5,000, then Schedule F must be completed, even though it maintains no offices, employees or agents overseas.

Line 18, income from fundraising events. It appears that an organization answers "Yes" only if the totals on both Part VII, Lines 1c and 8a are more than $15,000, so the organization could have gross revenue from events of more than $15,000 and not be required to complete Part II of Schedule G, but the instructions are not clear in leading to this conclusion.

The determination of whether to complete Schedule G is very complex and confusing. Part of the confusion arises from the reporting of fundraising events income on both line 1c and line 8 of Part VIII. The instructions should also clarify whether expenses of producing an event are to be subtracted as "direct expenses," or if those expenses are only reported on Schedule G. For example, where are expenses such as cost of food or rental of a facility for a fundraising dinner reported? The issue of payment in excess of items provided to donors is dealt with in detail, but some other issues have not been included in the instructions and examples.

Line 23, compensation. The instructions for which employees must be listed in Part VII that uses the $100,000 threshold for the five highest paid employees; the $150,000 threshold for current key employees; and the $150,000 threshold for completing Schedule J will be very confusing. See below for comments on Part VII.

Part VII, Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors

Caution. Even though the Instructions contain the "Caution" regarding the listing of "key employees," we would strongly urge the IRS to change the wording on Form 990, Part VII, Line 1a, to coincide with the Instructions regarding the listing of "key employees." One of the stated goals of the IRS for the Form 990 rewrite was to obtain more accurate reporting from nonprofits; inconsistencies between the forms and instructions will defeat this stated goal.

Schedule A

Part I, Reason for Public Charity Status

Line 8, community trust. The definition of "community trust" should be included in the Glossary, including clarification of whether a community trust is the same as a community foundation. References in the Instructions that refer to certain regulations,

such as Regulations section 1.170A-9(e)(10) would be far more helpful if there were instructions for obtaining such regulations.

A website sponsored by the IRS that provided all of the regulations cited in the forms and instructions, along with commentaries, explanations, or examples, if possible, would be a valuable resource for those completing the forms. Often discussions of regulations are available online, but organizations may be reluctant to rely on private sources for such assistance.

Schedule G

General Instructions

Who Must File. The Instructions seem to say that, only if the organization reports more than $15,000 on both Part IV and Line 18 **and** on Part VIII, Line 9a, must the organization complete Schedule G. While this may seem clear to the drafters of the instructions simply by use of the word “and,” it may not be as clear to all those reading the instructions. A definitive statement to that effect would be most helpful to confirm the intent of the instructions.

From: Kathy Reep
To: *TE/GE-EO-F990-Revision;
Subject: Comments on Form 990
Date: Thursday, May 29, 2008 1:43:13 PM
Attachments: comments IRS Form 990.doc

Please see attached comments on the instructions for the Form 990. Thank you for the opportunity to comment. <<comments IRS Form 990.doc>>

Kathy Reep
Vice President/Financial Services
Florida Hospital Association
(407) 841-6230 (Office)
(407) 422-5948 (Fax)

FLORIDA HOSPITAL ASSOCIATION
An Association of Hospitals & Health Systems

May 29, 2008

By Electronic Filing

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Avenue, NW
Washington, D.C. 20224

RE: Comments on Draft Form 990, Schedule H, and Selected Other Instructions

To Whom It May Concern:

On behalf of our 170 member hospitals and health systems and nearly 1,900 professional members, the Florida Hospital Association (FHA) appreciates the opportunity to submit comments on the draft instructions for Form 990, Schedule H for hospitals, and selected other sections of the draft instructions. While we greatly appreciate the time the Internal Revenue Service has put into the draft instructions, including the opportunity to discuss the draft instructions, we do have some issues that are of concern.

We believe that additional clarification is needed on the following –

- In the case of large health care systems, how should community benefits be reported when they are furnished by related foundations rather than by the hospital directly?
- Will software used to track community benefits reporting suffice as appropriate documentation rather than the IRS-provided worksheets?
- Under Section B, Part III, it appears that the IRS is including Part B physician services from a revenue perspective, but not the associated costs as these are excluded from the Medicare cost report. Please clarify why the revenues would be included or make the necessary changes to the instructions.

In addition to these concerns, we also support the comments made by the American Hospital Association in its letter dated May 15, 2008.

Again, we appreciate the opportunity to provide these comments. If you have any questions, please contact me at (407) 492-7519.

Sincerely,

Kathy Reep
Vice President/Financial Services

Corporate Office
306 East College Avenue
Tallahassee, FL 32301-1522
(850) 222-9800 Fax: (850) 561-6230

Regional Office
307 Park Lake Circle
Orlando, FL 32803
(407) 841-6230 Fax: (407) 422-5948

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444 N. Capitol Street, NW, #532
Washington, D.C. 20001
(202) 434-4848 Fax: (202) 434-4846

www.fha.org www.flacareers.com www.flhealthjobs.com

From: Ivy Baer
To: *TE/GE-EO-F990-Revision;
Subject: Comments from the AAMC
Date: Thursday, May 29, 2008 2:06:39 PM
Attachments: IRS comment ltr 5-28-08_FINAL.pdf

Comments from the AAMC are below. You also will find a PDF of the comment letter attached.

May 29, 2008

By Electronic Filing

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

The Association of American Medical Colleges is a not-for-profit association representing all 129 accredited U.S. and 17 accredited Canadian medical schools; nearly 400 major teaching hospitals and health systems; and 94 academic and scientific societies. Through these institutions and organizations, the AAMC represents 109,000 faculty members, 67,000 medical students, and 104,000 resident physicians. The Association appreciates the opportunity to submit comments on the draft instructions and worksheets for Form 990, Schedule H.

The Internal Revenue Service (IRS) has made an extraordinary effort to work with stakeholders in the development of instructions and worksheets to accompany Schedule H which, for the first time, allows hospitals to report to the Federal government on their community benefit activities. Due to the complexity of the information that hospitals must report, and a desire by all that the information be accurate, the AAMC hopes that even after the current set of comments are considered, the Service will continue to make refinements in the instructions. Because only one section of Schedule H must be completed for the 2008 tax filing year, there should be sufficient opportunity to clarify any issues that cannot be resolved by the time that the instructions and worksheets are printed for the 2008 returns, or that become apparent later.

Who Must File—Definition of a Hospital

The AAMC suggests that the definition of a hospital should be revised to read:

> A "hospital" is a facility that is licensed or certified as a hospital under state licensing or certification laws.

Part II—Community Building Activities

The AAMC appreciates that the IRS is collecting information on community building activities. These are vital activities in which hospitals frequently engage, often devoting considerable financial and staff resources, and upon which their communities rely. The AAMC hopes that in the future the IRS will allow community building activities to count as community benefit, and will move this information to the *Charity Care and Certain Other Community Benefits* table found under Part I of Schedule H.

Part III—Bad Debt, Medicare, & Collection Practices

The AAMC is concerned that Worksheet B (p. 11 of 23 of the draft instructions) for reporting Medicare bad debt will be confusing if finalized as proposed. For example, what is included in a "Medicare allowable costs" from the cost report? There is no single line in the cost report that represents allowable costs. For accuracy and consistency of reporting, hospitals should be advised as to which lines in the cost report should be used to determine this number. Hospitals also should be advised about how to handle physicians and/or mid-level practitioners (e.g., ARNPs or PAs) who are employed or under contract. These costs are not permitted to become Medicare allowable costs. Yet, if they are not included in the bad debt calculation, the amount will be understated on Worksheet B.

A further concern is that for many hospitals, cost reports will be completed after the Form 990 is submitted to the IRS, making accuracy even more challenging, and increasing the likelihood that hospitals will need extensions for filing the 990.

The AAMC would be pleased to work with the IRS to resolve these and other issues.

Definition of Research (found under Part V—Facility Information and Worksheet 7: Research)

As the IRS has worked to finalize the draft instructions and worksheets for Schedule H, the AAMC has continued to discuss issues with members, especially issues related to research and education. These discussions have lead us to conclude that when considering how to define research that should be counted for purposes of community benefit, the important factor is not the funding source, but whether the goal is to generate generalizable knowledge and communicate the findings and observations. Therefore, we strongly suggest that the definition of research be modified so that the first two lines read as follows:

> "Research" means any study or investigation of which the goal is to generate generalizable knowledge . . ."

Worksheet 5: Health Professions Education

The AAMC is very concerned that the instructions for this worksheet are confusing and contradictory. For example, the instructions state "not to include education or training programs available only to the organization's employees . . . " Later in the instructions, entities are directed to include costs that relate to medical residents. Though enrolled in an educational program and considered to be students, medical residents often are W-2 employees of a hospital. Further, the program in which they are enrolled is available only to the organization's employees (i.e., other medical residents). The IRS should state clearly that for purposes of this worksheet, medical residents are not considered to be the organization's employees.

Worksheet 5 also instructs entities that " if education and training is not restricted to the organization's employees and medical staff, use a **reasonable allocation** to report only the expenses related to providing the education or training to persons who are not employees of the organization or not on the organization's medical staff." (emphasis added). The IRS should allow entities to count the full cost of education and training that is

open to all qualified individuals in the community. Allocating costs will be extremely burdensome and seems to be unnecessary. An individual who is currently an employee of an organization may receive training through one of these programs. If that individual then changes employers, as frequently happens, he/she will bring the knowledge gained through this training to the new employer, thus benefitting a wider community.

Line 8 of Worksheet 5 calls for "Medicare reimbursement for direct GME." The instructions should be more explicit about what this means: the amount claimed in the cost report (which generally is determined after the fiscal year end); the amount paid during the fiscal year as a pass through cost; or the amount recognized as income during the fiscal year? Also, should hospitals include Medicare reimbursement from participating HMO plans? Finally, how should they hand current year settlements received for prior year DGME expenses? The AAMC would welcome the opportunity to continue to work with the IRS to answer these questions.

Form 990: Definition of "Key Employee"

The AAMC is concerned that the IRS definition of "key employee" will encompass many more individuals than is appropriate. Part of the definition in the draft is that a key employee "manages a discrete segment or activity of the organization that represents 5% or more of the activities, assets, income, or expenses of the organization." The AAMC believes that 5% is too low a threshold. The Association suggests that the IRS consider a much higher threshold--perhaps 20%--and focus on the activities in which these individuals are engaged, so that key employees must have "responsibilities, powers or influence over the organization." Without these changes, it is conceivable that individuals who head the human resources department or manage building services could be classified as "key employees." There also should be a limit on the number of employees to be reported.

Thank you for your consideration of these comments. If you have further questions, please contact me or Ivy Baer of my staff. We both may be reached at 202-828-0490.

Sincerely yours,

Robert M. Dickler
Chief Health Care Officer

Ivy Baer
Director and Regulatory Counsel
Association of American Medical Colleges
2450 N Street, N.W.
Washington, DC 20037
ph: 202-828-0499
fax: 202-828-4792

From: Melissa Tricarico
To: *TE/GE-EO-F990-Revision;
cc: Fred Hutchison; John Salbego; Mark Einstein;
Subject: 990 Revision comments from Reznick Group, PC
Date: Thursday, May 29, 2008 2:43:36 PM
Attachments: 990 Instruction Comments from Reznick Group PC.pdf

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IRS,

Attached are comments that our firm, Reznick Group, P.C., has put together in regard to the revisions to the Form 990.

Please feel free to contact John Salbego at (703)744-7436.

Thank you,

Melissa Tricarico
Administrative Assistant

Reznick Group, P.C.
8045 Leesburg Pike
Suite 300
Vienna, VA 22182

Direct (703) 744-7402
Main (703) 744-6700
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Reznick Group

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Fax: (703) 744-6701
www.reznickgroup.com

May 22, 2008

IRS
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Ave., N.W.
Washington, D.C. 20224

Re: Proposed Form 990 Instruction Comments

Dear Sirs:

After reviewing the proposed instructions accompanying the IRS Form 990, the tax-exempt practice of Reznick Group, P.C. wishes to commend the Service for doing an excellent job, particularly in light of the complexity of issues and the time constraints placed on providing the exempt organization community with needed clarity. The Service is also to be commended for doing an excellent job overall with the entire process of redesigning the Form 990. Providing all interested parties with the opportunity to participate in the process is admirable and demonstrates the openness of the IRS on this important matter.

However, there are issues and clarifications that we wish to submit as suggestions for consideration. They are as follows:

Page 1, Letter H(b)
Consistent with the process of eliminating unstructured attachments to the Form 990 is the need to require the members of a group exemption be listed on a supplemental schedule. The information required should be reported in a pre-set columnar format ensuring that it is reported consistently, correctly and in turn received by the IRS with the rest of Form 990.

Page 1, Line 6, Volunteers
In addition to requesting an estimate of the number of volunteers to an organization, the Form 990 should also request the number of volunteer hours. The estimate of both the number and hours would provide a much more complete view of the effort of the organization in promoting its mission. Requesting an estimate of hours would also be consistent with the request in Schedule C to provide similar information.

Glossary
The glossary does a very good job of defining most terms. One term that does not appear in the glossary is "interested persons." As practitioners we understand the term; however, we have been asked by a number of clients for the definition of the term. As a suggestion, this should be added to the glossary and a cross-reference made to the glossary in the instructions to Part IV, Lines 26-28.

Reznick Group

Reznick Group, P.C.
8045 Leesburg Pike
Suite 300
Vienna, VA 22182-2737

Tel: (703) 744-6700
Fax: (703) 744-6701
www.reznickgroup.com

Part III, Line 1, Mission Statement

Every 501(c) organization should have at least a working mission statement, whether or not it has formally been adopted by its governing body. To say in the last statement in this part of the instructions that an organization can omit answering this question if the mission statement has not been adopted by its governing body seems to run counter to the spirit of making the Form 990 transparent. Organizations should not have the option of leaving this statement blank. Also, it should be made clear in the instructions that organizations cannot use the general purpose statement often found in the articles of incorporation of many corporations. The general purpose statement is not consistent with the mission statement.

Part V, Question 7, Information Returns

From our experience a more complete explanation of when to file such forms as the Form 8282 is in order because there seems to be quite a bit of confusion as to when this form needs to be filed and how it should be completed. Because these instructions will be examined and studied by a wide number of parties, this might be the appropriate medium to add some clarification regarding these forms, particularly because this section of the Form 990 considers other items of tax compliance.

Part VI. Line 4, Organizing Documents

The proposed instructions begin correctly by identifying the typical organizing documents. Confusion then arises as conflict of interest, whistleblower and document retention policies are mentioned. Generally, these later documents are not considered to be organizing documents but rather organizational policies adopted long after the organization has been formed. If the adoption or changes to such policies are to also be considered when this question is answered, the question needs to be rewritten to incorporate these policies. Also, why paraphrase the changes on Schedule O?

It seems that an attachment is in order, particularly because in a later question it is asked how all of these documents and policies are made available to the public. An attachment also provides data which otherwise might not be incorporated in a paraphrased response.

Part VI, Line 5. Material Diversion of Assets

The materiality level should be reduced to a level of $100,000 but a dollar/percentage formula should be retained. This change would result in the reporting of more events. Is the diversion amount before or after insurance recovery or restitution by the party responsible for the diversion of the assets? This should be clarified in the final instructions. Why not require all diversions to be reported, not just those that are material?

Part VI, Line 10, Form 990 Review

Expecting to have the governing body review the Form 990 before it is filed is an excellent element of management oversight. However, because both the Form 990 is

often completed just prior to the extended due date and the governing board often meets perhaps only twice each year, it becomes a management problem to have the Form 990 reviewed before it is filed. The problem could be ameliorated if the question were modified to permit a review by the governing body of the Form 990 filed in either the prior or current year.

Part VI, Line 12a, Conflict of Interest Policy

Is this policy intended to address the reporting of only conflicts involving financial transactions or is it intended to be a much broader all-inclusive policy addressing all conflicts that might occur? If the latter is true, the instructions should state that the policy is intended to be all-inclusive. Also, how should the organization respond to not only this question but others that ask if the policy is in place, if at the time of filing the Form 990 the particular policy has not been adopted by the governing body but will be in place by the end of the organization's tax year?

Part VI, Lines 13 and 14, Whistleblower and Document Retention Policies

With respect to a whistleblower and document retention policy, it should be added in the instructions that these policies are required under federal law not tax law. Such policies are not to be construed as to suggest that all provisions of the Sarbanes-Oxley Act applies to nonprofit organizations.

Part VI, Line 15, Process for Determining Compensation

An additional question is in order as it pertains to how an organization might determine compensation. Often larger organizations have a different process for determining compensation for levels of key employees on the basis of responsibilities. Because of this, an additional question asking if an organization follows the same process for determining the compensation for all officers and key employees should be included in the instructions. In Schedule O, organizations should be asked to explain differences in how the process of determining compensation is applied.

Part VI, Line 19, Public Disclosure

This question asks how documents are made available to the public. Included in the documents is the conflict of interest policy. Is this policy considered to be more important than the whistleblower and the document retention policies? If one policy is made available to the general public, why aren't all three required to be made available.

Part VII, Section A, Compensation

Thank you for a usable definition of "key employee." The threshold level for reporting of $150,000 is high for most organizations and will result in few, if any, key employees being reported on the Form 990. A level of $100,000 seems to be more realistic. The $100,000 level is also consistent with the level required by NYSE organizations. Also, the examples of who would qualify as a key employee are good. However, another example should be provided of either a trade association or a more typical charity each

with a number of departments. There are enough university and hospital examples provided in the proposed instructions.

Part VII. Section B. Independent Contractors

Distinguishing employees from independent contractors does not cause us any problems but identifying who is an independent contractor for disclosure on Form 990 does result in our asking further questions. Should a builder that is a corporation providing contractor services be listed? How about a building maintenance company, also a corporation? What about a caterer who is also a corporation? We have examined the Form 990 prepared by other accountants and there appears to be general confusion as to this definition. Providing examples of typical services or a definition of professional services would help eliminate the confusion. Who is considered to be professional rendering services would go a long way in clearing up the confusion.

Schedule A, Unusual Grants

In the definition of unusual grants, the term "disinterested persons" is used. Because of the nature of this term, a definition should appear either in this Schedule or in the glossary in order to avoid confusion and to clarify in the event of uncertainty.

Schedule C, Lobbying

The instructions to Part II should make it clear that a 501 (c) (3) organization is required to complete either II-A or II-B but not both parts. Which part to complete is determined on the basis of whether Form 5768 has been filed.

Schedule G, Supplemental Information Regarding Fundraising or Gaming Activities

With respect to fundraising events, is there intended to be a distinction between independent raffles and lotteries and ones that are conducted as a part of a larger event such as a dinner? Please also include in the instructions a definition of the term "nominal value."

Schedule J, Compensation

The instructions should provide that deferred compensation does not need to be reported on the Form 990 prior to vesting, as it has no real monetary value to the recipient up to that point.

Also, is first class travel analogous to business class or any upgrade from the traditional coach class travel? Do the same rules apply to both domestic and international travel? How should the question be answered in situations in which a traveler utilizes their frequent flyer miles to upgrade their tickets to first-class?

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Schedule K, Tax-Exempt Bonds

We encourage the IRS not to reconsider requiring data on pre-2003 tax-exempt bond issuances. The exercise would prove both costly to the issuer and likely would result in not all of the data being located.

Schedule M, Non-Cash Contributions

What is a "non-standard gift?" The term is unfamiliar to many of our clients and should be defined in the glossary.

We thank you for the opportunity to participate in this forum and we look forward to the release of the final instructions. We would be pleased to answer any questions relative to the issues raised in this comment letter.

Respectfully submitted,

Mark J. Einstein, C.P.A.
Principal
Reznick Group, P.C.

From: Kraiss, Sandy
To: *TE/GE-EO-F990-Revision;
Subject: Comments on Instructions
Date: Thursday, May 29, 2008 3:26:46 PM
Attachments: IRS 990 comment letter on instrustions 052908.pdf

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Please find attached a comment letter from the Illinois Hospital Association regarding the draft instructions for the Form 990. If you have any questions, you may contact me.

Thank you,
Sandy Kraiss
Senior Director, Finance
Illinois Hospital Association
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May 29, 2008

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Comments on Draft Form 990 Schedule H Instructions

The Illinois Hospital Association (IHA), on behalf of its nearly 200 members, welcomes this opportunity to submit comments on the Draft Form 990 Instructions for Schedule H. We appreciate the revisions made to the initially proposed Schedule H and believe the draft instructions provide valuable information for hospitals.

Many hospitals in Illinois have complex corporate structures and, as such, capturing the breadth of community benefit they provide is also complex. There is the potential to draw incorrect conclusions about their community benefits simply due to corporate structure. It is not clear where a hospital that, due to its corporate structure, has community benefits being provided in other entities should report those activities. We would recommend there be specific directions for this type of reporting.

Another concern is the definition of subsidized services and the exclusion from that definition of physician clinic services, skilled nursing services and ancillary services. Hospitals often will subsidize these services and incur a loss where there is a clear need in the community. Without the hospital's subsidization, these services would not be provided. This type of activity should be counted as community benefit.

The IHA believes that losses attributable to the Medicare program and bad debt are community benefits. Part III asks hospitals to provide an estimate of how much of their bad debt is attributable to patients eligible under their charity policy. It also asks for an estimate of how much of their Medicare shortfalls should be treated as community benefit. This area was addressed in the "Highlights" document dated December 20, 2007 which provided useful information as to the rationale for these questions. We suggest this discussion be included in the instructions to assist providers in completing this section.

Section B of Part III that addresses the calculation of Medicare shortfalls is confusing by its reference to "Medicare allowable costs of care". This seems to imply that hospitals are to only use Medicare cost reporting methods to calculate the shortfall. Medicare cost reporting is very different from Generally Accepted Accounting Principles (GAAP) and is used for a specific purpose. Hospitals should be allowed to use the costing method used elsewhere in Schedule H. In addition, whatever method used must ensure that the costs and revenue from the same services are included on both sides of the equation. For example, Part B physician services are removed from the definition of allowable costs on the cost report since they are paid for separately. However, the instructions state that revenue for physician services is to be included. The instructions should state that the

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hospital may use the most accurate costing methodology to calculate; the same instruction provided for calculation of Community Benefits in Part I.

Thank you for the opportunity to provide comments.

Sincerely,

John Bomher
Senior Vice President
Illinois Hospital Association

Cc: American Hospital Association
Metropolitan Chicago Healthcare Council

From: Lisa Gilden
To: *TE/GE-EO-F990-Revision;
Subject: CHA Comments on Form 990 Draft Instructions
Date: Thursday, May 29, 2008 3:45:06 PM
Attachments: CHA Comment Letter Form 990 Instructions FINAL.docx

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Good afternoon: Please find attached the Comments of the Catholic Health Association of the United States on the Form 990 Draft Instructions.

Please let me know if you have any difficulties opening this document.

Thank you, Lisa Gilden

Lisa J. Gilden, Esq.
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THE
CATHOLIC HEALTH
ASSOCIATION
OF THE UNITED STATES

May 29, 2008

By Electronic Filing

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

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The Catholic Health Association of the United States (CHA) is pleased to submit the following comments on the Draft 2008 Form 990 Instructions. CHA is the national leadership organization representing the Catholic health care ministry in this country. Founded in 1915, CHA has over 1,950 members from all 50 states, forming the nation's largest group of nonprofit health care systems, hospitals, long-term care facilities and related organizations. CHA's member hospitals have been providing charity care and community benefit (collectively referred to as community benefit) and have been promoting the health of our communities for well over 100 years.

Our comments are focused on the following areas of the Draft Instructions: (1) Core Form, Part VI, Section A; (2) the definition of "independent member of governing body" in the Glossary; (3) Schedule H; and (4) Schedule R.

1. Core Form, Part VI, Section A

a. Line 10, Governing Body Review of Form 990

Issue

Part VI, Section A, Line 10 asks organizations whether a copy of the final Form 990 was provided to the governing body prior to filing. This was changed from the June draft which required the governing body to have reviewed the Form prior to filing. CHA believes that the change from "reviewed by" to "provided to" was a step in the right direction, as it recognizes that governing bodies may not always meet between the time that the Form 990 is finalized and when it is filed. However, the instructions as currently drafted seem to take away the flexibility that we thought the change in language in Line 10 was meant to address. In addition, the instructions would appear to create a fiduciary dilemma for members of the governing body who receive the Form 990. Once they receive it, is there a responsibility to review it before filing? As we understand it, it is not the IRS's intention to create "new law" in the area of governance through the Form 990.

Recommendation

CHA believes that the IRS should clarify that there is no requirement that the governing body take any action with respect to the Form 990 prior to filing. Further, given the realities of how boards and their committees operate, we believe that a summary provided to the board or aboard-authorized committee should also allow the organization to answer "yes" to Line 10. Accordingly, we suggest restating the instructions as follows:

> **Line 10. Governing body review of Form 990.** State "yes" to this question if a final draft of the Form 990 (or a summary thereof) was provided in paper or electronic form to each member of the organization's governing body (or an authorized committee thereof) prior to filing with the IRS. A "yes" answer does not require the governing body or authorized committee thereof to have reviewed or approved the Form 990 (or summary thereof) prior to filing with the IRS. Such review, if any, can be performed before or after the filing. A description of the process for such review (e.g., who conducted the review, when they conducted it, and the extent of the review) should be provided on Schedule O. If no review was conducted state "No review was conducted."

2. Glossary

a. Definition of "Independent Member of Governing Body"

Issue

The definition of "independent member of governing body" should be expanded to include a member of a religious order who serves on the hospital board and whose religious order sponsors the hospital and receives sponsor payments from the hospital. The current definition only includes members of religious orders who receive officer or employee compensation from the hospital. This definition should be expanded to cover non-employed members of religious orders who serve on the board without compensation, but who otherwise could be perceived to receive indirect benefit from the hospital because the religious order to which she or he belongs receives sponsorship or other similar payments from the hospital.

The definition of "independent member of governing body" lists four criteria, all of which must be satisfied for the member to be considered independent. One of those criteria is:

> 3. The member did not otherwise receive, directly or indirectly, material financial benefits from the organization. . . . In any case, a transaction with an amount greater than $50,000 is per se material.

CHA is concerned that a payment by a hospital to its sponsoring order would be deemed an indirect material benefit to any member of the order. If any such members serve on the hospital's board, they would be deemed to lack independence. CHA does not believe that this is what the IRS intended because the IRS already provided an exception for members of religious orders who receive officer or employee compensation from a sponsored hospital.

Recommendation

CHA believes this situation can be addressed by revising the second exception (that addresses members of religious orders receiving compensation) as follows:

2. The member has taken a bona fide vow of poverty and either (1) receives officer or employee compensation as an agent of a religious order or a 501(d) religious or apostolic organization ~~and has taken a bona fide vow of poverty~~, but only under circumstances in which the member does not receive taxable income (see, e.g., Rev. Ruls.77-290, 80-332); or (2) belongs to a religious order that receives sponsorship or other payments from the organization.

3. Schedule H

a. Definitions of Hospital

Issue

If the filing organization operates a facility that is licensed as a hospital under state law, the organization is required to prepare Schedule H. This, however, is inconsistent with Schedule A. Schedule A, Part I, Line 3 says that a hospital as defined under Section 170(b)(1)(A)(iii) is required to attach Schedule H. The definition of a hospital under Section 170(b)(1)(A)(iii) is much broader than the Schedule H definition and can include, as the instructions for Line 3 point out, a "rehabilitation institution or an outpatient clinic" -- facilities that are not licensed as hospitals and are not part of the Schedule H definition. The Line 3 instructions also contain the following:

> **TIP:** An organization that checks this box must also complete Schedule H, *Hospitals.*

Recommendation

Since neither the form itself nor the definition of "hospital" under 170(b)(1)(A)(iii) can be changed at this point for Schedule A, we suggest that the "tip" be revised as follows:

> **TIP:** The definition of "hospital" for Schedule A, Part I, Line 3, and the definition of "hospital" for Schedule H are not the same. The definition for Schedule H only includes facilities licensed as hospitals under state law. Thus, for example, an outpatient clinic may meet the Schedule A definition but would not meet the Schedule H definition. Organizations that check the box on Line 3 only need to fill out Schedule H if they operate a facility licensed or required to be licensed as a hospital under state law.

b. Part I, Line 3c (Other Income-Based Criteria)

Issue

Lines 3a through 3c could be interpreted as implying that the Federal Poverty Guidelines (FPGs) are the preferred benchmark for establishing qualification for financial assistance. Although Line 3c asks the organization to state if it uses other benchmarks, a member of the public reviewing the Form 990 could make the mistaken assumption that organizations that use other benchmarks are somehow not playing by the rules. While many hospitals do use FPGs, others use the HUD Very-Low Income Guidelines, and others still, state guidelines. CHA believes it was not the IRS's intent to put forth FPGs as the preferred benchmark. Thus, clarification that other benchmarks can be used is warranted.

Recommendation

CHA believes this can be addressed by adding the following language to the instructions for Part I, Line 3c:

> If applicable, describe the other income-based criteria, asset tests, or other means tests or thresholds for free or discounted care in Part VI, Question 1 of this Schedule H. While many hospitals use FPGs as an income-based criteria, some use other federal guidelines (such as the HUD Very-Low Income Guidelines), and still others use state guidelines (such as guidelines used to qualify individuals for food or housing assistance.

c. Part I, Line 7f (Health Professions Education)

Issue

Line 7f reports health professions education costs. These are calculated using Worksheet 5 or equivalent documentation. The instructions for Worksheet 5 state that if education and training is provided solely to members of the hospital's medical staff or employees, it cannot be reported on Line 7f. The instructions also state that if education and training are not restricted solely to members of the medical staff or employees, and are open to members of the public, the hospital should use a reasonable method to determine the portion of the cost attributable to members of the public and only that amount can be reported on Line 7f.

CHA believes this required tracking and allocation would be unduly burdensome and inconsistent with the IRS's stated goal of reducing the burden on filing organizations. Hospitals typically do not track who attended such events and whether or not attendees were employees or members of the professional staff. CHA believes that if the primary purpose of the education or training is to educate health professionals in the broader community (as opposed to merely internal staff), the full costs of the education or training should be includable on Line 7f, and no allocation is necessary.

In addition, the CHA framework includes promoting health careers, such as mentoring programs, in the category of health professional education. Accordingly, to be consistent with the CHA guidelines upon which the Schedule H is based, the instructions should make this clarification.

Finally, CHA notes that the current definition could be read to exclude intern, resident and fellow education and training because these persons are typically employees of the hospital and the education and training is not open to members of the public. CHA does not believe this was the IRS's intent because the instructions to Lines 1-6 of Worksheet 5 clearly indicate that costs associated with residents and fellows are includable. Accordingly, we believe this inconsistency should be clarified.

Recommendation

CHA believes that all these issues can be addressed by making the following changes to the instructions for Worksheet 5:

> It does not include <u>in-service</u> education or <u>continuing health professional education</u> training programs available only to the organization's employees and medical staff or scholarships provided to those individuals<u>; however, it does include education</u> programs, if the

primary purpose is to educate health professionals in the broader community. It also includes activities promoting health careers, such as mentoring programs. It also includes education and training programs for interns, residents and fellows even though such persons are generally employed by the organization. ~~If education and training is not restricted to the organization's employees and medical staff, use a reasonable allocation to report only the expenses related to providing the education or training to persons who are not employees of the organization or not on the organization's medical staff.~~

Example 1: Organization provides continuing education every other Tuesday at 7:00 a.m. This time is chosen to allow physicians on the medical staff to participate before they conduct their morning rounds. This program is intended solely for internal use and is not advertised to the public. No one other than members of the Organization's medical staff attend. This program does not count as health professions education.

Example 2: Organization operates the only advanced burn unit in a two-state area. Organization hosts an annual day-long institute in which it provides training to physicians from throughout the two-state area to teach them about burn care techniques that can be used in local emergency departments. This program counts in total as health professions education because the primary purpose is to educate health professionals in the broader community, even if members of the organization's medical staff attend.

d. Part I, Line 7g (Subsidized Health Services)

Issue

Line 7g reports subsidized health services. The amounts are calculated using Worksheet 6 or equivalent documentation. The instructions to Worksheet 6 state:

> Subsidized health services generally exclude ancillary services (that support inpatient and ambulatory programs), such as anesthesiology, radiology, laboratory departments, physician clinic services, and skilled nursing facilities.

CHA is not clear why the IRS generally excluded physician clinic services and skilled nursing services as subsidized health services. We see no reason why these should be excluded where, in fact, they are operated at a loss, meet a documented community need, improve access to care, or enhance public health. Many hospitals have satellite physician clinics that serve at-risk or underserved populations (e.g., free health clinics or pediatric clinics).

Many hospitals also offer skilled nursing facilities that serve persons who would otherwise have difficulty receiving access to appropriate health services. For some critical access hospitals, skilled nursing units can represent more than one-half of total bed capacity. As long as physician clinic and skilled nursing services meet the subsidized health service requirements stated in the instructions to Worksheet 6, then the organization should be able to report it on Line 7g (e.g., the service meets an identified community need and if the organization did not offer the service, it would not be available in the community, the community's capacity to provide the service would be below the community's need, or the service would become the responsibility of a government entity or another tax-exempt organization).

Recommendation

CHA believes this can be addressed by revising the instructions to Worksheet 6 to read as follows:

> Subsidized health services generally exclude ancillary services (that support inpatient and ambulatory programs), such as anesthesiology, radiology, and laboratory departments~~. physician clinic services, and skilled nursing facilities~~.
>
> Due to the nature of subsidized health services, some types of services may or may not qualify based on whether they meet the definition. For example, physician services and skilled nursing facilities may or may not qualify as a subsidized health service depending on whether (1) the service meets an identified community need (as defined in the instructions to Worksheet 4) and (2) if the organization ceased providing the service, it would be unavailable in the community, the community's capacity to provide the service would be below the community's need for the service, or the service would become the responsibility of government or another tax-exempt organization.
>
> Example 1: Organization employs a group of physicians who are board-certified in Specialty X. Many other hospitals in the Organization's service area employ physicians who are board-certified in Specialty X. If the organization did not employ the specialists, Specialty X would still be widely available in the community. Because the service does not meet an identified community need, this is not a subsidized health service.
>
> Example 2: Organization is a critical access hospital operating in a federally-designated "Health Professional Shortage Area." Given the market conditions, no specialist who is board-certified in Specialty X (the same specialty described in Example 1) will locate in the community. Organization employs a specialist who is board-certified

in Specialty X on a full-time basis to provide continuous services to the community. Because the Organization loses money on the specialist, and because Specialty X would not otherwise be available if the specialist were not employed by the Organization, this counts in total as a subsidized health service, even if members of the hospital's medical staff also attend.

e. Part I, Line 7h (Research Costs)

Issue

Line 7h reports research costs. Research costs are calculated using Worksheet 7. The instructions for Worksheet 7 define research as "any study or investigation that receives funding from a tax-exempt or government entity . . . ." CHA believes that it was the IRS's intent to allow organizations that use their own funds for research to include these costs as community benefit expenses.

Recommendation

CHA believes this can be clarified by revising the instruction in Worksheet 6 to read as follows:

> "Research" means any study or investigation that receives funding from a tax-exempt entity (including the organization) or government entity of which the goal is generalizable knowledge that is made available to the public . . . .

f. Part I, Line 7i (Cash and In-Kind Contributions)

Issue

Line 7i reports cash and in-kind contributions. These costs are calculated using Worksheet 8. The instructions to Worksheet 8 read as follows:

> Do not include any contributions that were funded in whole or in part by a restricted grant, to the extent that such grant was funded by a related organization.

CHA believes that this instruction is confusing because it involves both grants received and grants made and it is not clear to which the word "contributions" is referring. Further, even with some clarification, there are potential grants that could legitimately be reported that would be excluded by this definition.

CHA supports the IRS in its endeavor to craft such anti-abuse or anti-churning language. If Hospital A grants to Hospital B, and Hospital B grants to Hospital C, and Hospital C grants the same funds back to Hospital A, it would clearly be improper for all the hospitals to report the grants as community benefit expense on Line 7i. But this anti-abuse/anti-churning policy is only implied in the instructions and should be clearly stated. Further, there are situations where one entity makes a grant to another related entity and that entity grants to a third related entity, but only one entity among the three files a Schedule H. It is not unreasonable in these situations for the entity filing the Schedule H to want to report the contribution made. Finally, cash is fungible so it is not always clear if a grant received is being re-granted, or if other funds are being used to make the grant.

Recommendation

Instead of trying to draft specific language to target a specific situation, CHA believes that a broad policy statement is better. It would be more applicable to a broader range of potentially abusive transactions but would not be applicable to situations that are not abusive. CHA recommends that the current instruction language (quoted previously) be deleted and replaced with the following:

> Groups of related organizations are not allowed to count the same granted funds as community benefit expense. For example, if Hospital A grants to related Hospital B, and Hospital B grants to related Hospital C, and Hospital C grants the same funds back to Hospital A, then it is clearly impermissible for any of these related hospitals to report community benefit expense associated with such grants on Line 7i. However, if grants are made among related organizations for legitimate purposes, the organizations can exercise some flexibility to determine who reports the grant as community benefit expense, provided that care is taken to avoid double counting. For example, if a foundation (or a hospital system parent) makes a grant to a related hospital for charity care, and the hospital grants those funds to a related outpatient clinic that provides free and discounted care in rural areas, it is permissible for the hospital to report the grant on Line 7i of its Schedule H because neither the foundation (or hospital system parent) nor the outpatient clinic would file a Schedule H and the community benefit would go unreported if the hospital did not report it.

g. Part II, Line 4 (Environmental Improvements)

Issue and Recommendation

The definition includes portions of the CHA definition of environmental improvements, but not the entire definition. CHA believes the definition of environmental improvements should be expanded to read as follows: "This also includes health care facility environmental activities, such as waste and mercury reduction, green purchasing and other ecology initiatives."

h. Part III, Section C, Line 9(b) (Collection Practices)

Issue

Part III, Section C, Line 9(b) asks whether "an organization's collection policy contains provisions on the collection practices to be followed for patients who are known to qualify for charity care or financial assistance." (Emphasis added.)

However, the instructions for Line 9(b) do not track the language of the question on Line 9(b) at all. First, the instructions broaden the question to cover all patients, not just those who qualify for charity care or financial assistance. Then, contrary to the question itself, the instructions state that the question covers "those who would likely qualify" as opposed to the question's wording of "those who are known to qualify".

Recommendation

CHA believes this can be addressed by revising the instruction in Line 9(b) to read as follows:

Answer "yes" if the organization's written debt collection policy contains provisions for collecting amounts due from patients, including those patients the organization knows would qualify for charity care or financial assistance. For example, if the policy states that the organization will not commence a collection action against any patient without prior internal review, then the organization may answer "yes" to this question.

i. Part V (Facilities)

Issue

The instructions define the term "facility" for purposes of reporting on Part V as follows:

> A facility is defined for Part V to include . . . a building, structure or other physical location or address, at which the organization provides medical or hospital care.

A hospital may provide medical care by doing free health screenings at every shopping mall in the community, doing free dental exams at every elementary school in the community, and using a mobile mammography unit to provide free screenings at numerous locations throughout the community. On its face, the instructions require the hospital to report the address of every mall, elementary school and parking stop of the mobile mammography. This definition is overly broad and contrary to the language of Part V of the Form itself, which contains checkboxes that pertain only to types of hospitals. It also increases the administrative burden on reporting organizations without providing any useful information to the IRS or to the general public reviewing the form.

Recommendation

CHA strongly believes there should be an easily-administrable, bright-line test for those facilities that need to be reported on a location-by-location basis in Part V. CHA recommends that organizations be required to report any health care facility that is required to be licensed under applicable state law. This would require reporting every hospital facility and would generally require reporting of other facilities such as ambulatory surgery centers, rehabilitation hospitals, skilled nursing facilities, diagnostic centers, and in many states free-standing laboratories and pharmacies. Accordingly, CHA suggests the following revisions to the instructions:

> Any health care facility whose information is reported or included elsewhere in Schedule H must be separately listed in Part V. A facility is defined for Part V <u>as any facility required to be</u> licensed as a health care provider by state law. Depending on state law this could include (in addition to hospitals<u>) ambulatory surgery centers, skilled nursing facilities, laboratories, pharmacies, diagnostic testing facilities, and any other facility requiring a license as a health care provider under state law</u>. [Delete remainder of paragraph.]

4. Schedule R

a. Page 4 (Group Exemptions)

Issue and Recommendation

The instructions are clear that members of a group exemption do not have to list any other subordinate members of the group in Part II. What is not clear, however, is to what extent related organizations of subordinate members need to be reported on the Schedule R for the central organization or the Schedule R for the consolidated return for subordinate members. CHA believes that what is implied, but what is not clear, is that related organizations of subordinate organizations would not have to be reported on any Schedule R because the instructions only require subordinate organizations filing an individual Schedule R to report its central organization and only require the central organization to report members of the group in response for the core Form 990, page 1, Line H(b). CHA believes the IRS should clarify that this is the reporting expectation.

In addition, the instructions make it clear that a member of a group ruling filing a separate return is not required to list any of the other group ruling subordinate organizations in Part II (which governs related exempt organizations). However, IRS makes no mention of how a subordinate in a group ruling that files its own returns handles partnerships, corporations and trusts that are owned / controlled directly by other subordinates.

As the IRS may imagine, many members of group rulings have for-profit subsidiaries. As a result of the attribution rules, ownership of a for-profit subsidiary of one subordinate in a group ruling can be attributed to most other subordinate members of the group ruling. Thus, in a group ruling such as the Catholic Church, a subordinate entity that files its own return would likely be required to list all of the for-profit subsidiaries of all of the other tax-exempt organizations that are listed in the Official Catholic Directory. This cannot be what IRS intends. We recommend that the IRS change the language of Schedule R to require members of a group ruling filing a separate return to disclose only those organizations over which they have direct control.

b. Page 4, Instructions, Schedule R (Indirect Control)

Issue and Recommendation

The instructions on Page 4 of the Instructions to Schedule R say that control can be indirect. For example, if the organization controls Hospital A, and Hospital A controls Hospital B, then the organization indirectly controls Hospital B. In other parts of the Form 990 and instructions, control with

respect to the filing organization often refers to several types of relationships: the organization controls another, the organization is controlled by another, or the organization is under common control with another. CHA believes that the definition of indirect control is only referring to one entity controlling another, who in turn controls a third party, but that nowhere in the chain does common control or control by another factor in. For example, the following examples explain our concern:

> Example 1: If the organization and another nonprofit each own 50% of a joint venture (not meeting the definition of control) but both entities are managing partners (which meets the definition of control), then the hospital controls the joint venture and the joint venture is controlled by the other nonprofit. Is the other, unrelated nonprofit an indirectly-controlled entity such that the reporting organization has to include information about the other nonprofit?
>
> Example 2: If the organization is in a joint venture with a for-profit, and hospital owns more than 50% (meeting the definition of control) and the for-profit is the managing partner (also meeting the definition of control), then the organization controls the joint venture and the joint venture is controlled by the for-profit. Is the for-profit a related entity such that the reporting organization has to include information about the other for-profit?

In both examples, CHA believes that the reporting organization should not have to report any information about the nonprofit or for-profit joint venture partners, but CHA believes the IRS should clarify this.

c. Parts III and IV (Disproportionate Allocations)

Issue and Recommendation

The instructions use the term "disproportionate allocations" as being those allocations or distributions that differ from the organization's investment. The partnership regulations, however, talk about allocations that have "economic substance." CHA believes that the instructions dealing with disproportionate allocations should be tied to or reference the treasury regulations on economic substance. In other words, organizations would have to report distributions and allocations that lack economic substance rather than ones that are disproportionate (as disproportionate allocations can have economic substance under the regulations).

d. Parts III and IV (Share of Income and Assets)

Issue

In both Parts III and IV, the organization is supposed to report the share of income of the related entity. With a simple example, that sounds easy. For example, if the organization is a 80% member in an LLC that is a 80% partner in a partnership (both of whom are taxed as partnerships), then presumably the organization would report a 64% share of the partnership's income and assets (80% of 80%=64%).

However, it gets more complicated moving down multiple generations of the corporate family tree and when different types of organizations are involved. If the hospital owns a 75% stake in a for-profit corporation (the other 25% of which is owned by an unrelated nonprofit hospital), and the for-profit corporation owns 100% of the preferred membership interests in an LLC (giving it certain preferred distribution rights) and 100% of the common membership interests are owned by physicians (giving them distribution rights only when the for-profit corporation has received all of its distributions and only once certain income thresholds are met), then what is the reporting organization supposed to report on Schedule R as its share of income and assets of the LLC?

Recommendation

CHA believes that in Part III, reporting the share of income and assets (columns (f) and (g)) should only be required when all entities in the ownership chain past the reporting organization are entities taxed as partnerships (the simple example above). For Part IV, reporting the share of income and assets (columns (f) and (g)) should only be required when the reporting organization is the direct shareholder in the related corporation and there is only a single class of stock (with no differences among stockholders with respect to voting, dividends, liquidation distributions or other rights). The instructions should also clarify that stock ownership should be multiplied against income and assets of the corporation with stock ownership, income and assets all being measured as of the last day of the tax year that ends during (or co-terminus with) the reporting organization's tax year.

e. Part IV (Trusts)

Issue

Included in the definition of control on Page 4 of the Instructions to Schedule R is an organization that has ownership of more than a 50% beneficial interest in a trust. On its face, this would include an organization that is the beneficiary of a decedent's trust or estate as well as organizations

that are beneficiaries of charitable lead trusts and charitable remainder trusts. With such donative instruments, the reporting organization may not know whom the other beneficiaries are and/or whether the organization has a 50% beneficial interest. Moreover, these entities (especially decedent's estates and trusts) generally are in existence for only a short period and reporting them on the Schedule R would provide no useful information.

The IRS would clearly want to know about organizations that are permanent or perpetual trusts (as opposed to decedent's trusts and estates) that are supporting organizations of the reporting organization, and this should be reported. However, some of these might escape the 50% beneficial interest rule and not meet another definition of control and therefore not get reported.

So, under this definition some entities (decedent's trusts and estates) are getting reported that should not be, and some organizations are not getting reported that should be (certain trusts that are supporting organizations).

Recommendation

CHA believes that the "more than 50% beneficial interest in a trust" should be deleted as a factor establishing "control" and replaced with the following:

> The organization is a supporting organization of or supported organization of another entity (within the meaning of Section 509(a)(3)). This does not include decedent's estates or trusts, or charitable lead or charitable remainder trusts.

* * * *

CHA appreciates the IRS's continued effort to solicit input from the public on the Instructions to the Form 990. Please contact me at (202) 721-6319 if you have any questions.

Sincerely,

Lisa J. Gilden
Vice President, General Counsel

From:	Robert Boisture
To:	*TE/GE-EO-F990-Revision;
cc:	Williams, Angela; Lovell, Joan;
Subject:	Comments of the YMCA of the USA on the Proposed Instructions for the Revised Form 990
Date:	Thursday, May 29, 2008 3:54:53 PM
Attachments:	DOCS-#307201-v1-2008-5-27_Ltr_to_IRS_re_YMCA_comments_of_proposed_Form_990_instructions.PDF DOCS-#307200-v1-20070527_YMCA_Comments_on_Proposed_Instructions_to_Form_990.DOC

Attached are Word and PDF copies of the comments of the YMCA of the USA on the proposed instructions for the revised Form 990.

Please contact Joan Lovell, Assistant General Counsel, YMCA of the USA, if you have any questions about, or would like to discuss, these comments. Joan may be reached at (312) 419-8414, or at Joan.Lovell@YMCA.net.

<<DOCS-#307201-v1-2008-5-27_Ltr_to_IRS_re_YMCA_comments_of_proposed_Form_990_instructions.PDF>>
<<DOCS-#307200-v1-20070527_YMCA_Comments_on_Proposed_Instructions_to_Form_990.DOC>>

We build strong kids,
strong families,
strong communities.

May 27, 2008

Mr. Steven T. Miller
Assistant Commissioner, Tax-exempt and Governmental Entities
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Form 990 Revisions

Dear Commissioner Miller:

The YMCA of the USA is submitting these comments on behalf of America's nearly 1,000 independent local YMCAs. The YMCA appreciates this opportunity to comment on the proposed instructions for the new Form 990, and believes that overall the proposed instructions provide clear and useful guidance on completion of the Form 990.

The comments below focus primarily on the new Form 990's use of activity codes in Parts III and VIII to classify program activities and program revenue. These activity codes are likely to be quite important for both the Service's oversight and the public's understanding of charities. Given this fact, we strongly urge the Service to allow the time, and provide active support, for a broadly participatory process – led by Independent Sector, the National Center for Charitable Statistics, and/or other appropriate charitable sector leadership organizations – to develop a consensus charitable sector recommendation on the optimum structure and content of the Form 990 activity codes.

Background Information on the YMCA and YMCA Programs

Nationwide, YMCAs serve over 20 million Americans. Our current strategic plan defines our goal for the next five years as follows:

> America's YMCAs commit to extend our charitable heritage by directly engaging 25 million children and adults from all segments of our communities in achieving health of spirit, mind, and body by 2012.

More specifically, our commitment to our communities and to the individuals we serve is that:

- Every child and youth will deepen positive values, their commitment to service and their motivation to learn;

YMCA of the USA • 101 North Wacker Drive • Chicago, Illinois 60606
312-977-0031 • toll free: 800-872-9622 • fax: 312-977-9063 • www.ymca.net

- Every family will build strong bonds, achieve greater work/life balance and become more engaged with their communities; and
- Every individual will strengthen their spiritual, mental and physical well-being.

YMCAs' commitment to meeting the broad and ever changing human development needs of our communities has led YMCAs to develop a comparably broad range of programs for persons of all ages. The breadth of our program offerings is reflected in the Program section of our national resources website for local YMCAs, which lists, in alphabetical order, the following broad program categories:

- Aquatics & Scuba
- Arts & Humanities
- Camping
- Child Care
- Family Strengthening
- Health & Well-being
- Older Adults
- Service Learning & Civic Engagement
- Sports & Recreation
- Volunteer Development
- Youth & Teens

Many YMCAs also operate housing programs serving populations whose housing needs are not fully met by the commercial housing market.

I. The Form 990-T UBIT Codes are inappropriate for classifying related program services activities on Part VIII, Line 2.

The proposed instructions for Part VIII, Line 2, Column (A) read as follows:

> For each amount entered on lines 2a through 2e, the organization must also enter a corresponding business code from *Codes of Unrelated Business Activity* from the 2008 Instructions for Form 990-T.

However, the great majority of program service activities reported on Line 2 will be related activities that directly advance the reporting organization's tax-exempt purposes. The Form 990-T unrelated business codes are clearly inappropriate for classifying these related program activities.

The Form 990-T instructions explicitly recognize that the UBIT codes are to be used only to classify unrelated activities. Specifically, the explanatory introductory statement accompanying the list of UBIT codes on page 24 of the Form 990-T instructions states:

> Be sure to classify your unrelated activities, rather than your related activities.

The instructions for the 2007 Form 990 likewise clearly recognized that the UBIT codes are appropriate only for unrelated business activities. On the 2007 Form 990, program service revenue was reported and classified on Part VII, Line 93. Line 93 clearly distinguished related from unrelated program service revenue, with revenue from unrelated activities classified and reported in Columns (A) and (B) respectively, while revenue from related activities was reported in Column (E). Both the format of Line 93 and the text of the corresponding instructions made clear that UBIT codes were required only for unrelated program services activities. The relevant portion of the instructions stated:

> In column (A), identify any *unrelated business income* reported in column (B) by selecting a business code from the *Codes for Unrelated Business Activity* in the 2007 Instructions for the Form 990-T. (Emphasis added.)

The 2008 Form 990 and the accompanying instructions should also clearly recognize this fundamental distinction by requiring the reporting of UBIT codes only for unrelated program service activities. As discussed below, we also recommend that the Service invite the charitable sector to participate actively in the development of the Form 990 activity codes.

II. The same program codes should be used for both Part III, Line 4 and Part VII, Line 2

The new Form 990 also requires that reporting organizations report on Part III, Lines 4a-4c an appropriate activity code for each of the organization's largest program services activities. Again, the instructions make clear that activities potentially reported on Lines 4a-4c include both related and unrelated activities.[1] Since the program service activities reported and coded on Part III, Line 4a-c will also be reported and coded on Part VIII, Line 2, it follows that the same activity codes should be used for both parts of the return.

III. Just as for Part III, Line 4, the 2008 Form 990 should not require activity codes on Part VIII, Line 2

The proposed instructions for Part III, Line 4 state that:

> Activity Codes [are] to be left blank for 2008 tax years while IRS solicits comments on whether to rely on existing codes or develop new codes.

---

[1] The Part III, Line 4 instructions state:

> This revenue includes program service revenue reported in Part VIII, line 2, column (A), and includes other amounts reported in lines 3-11 of Part VIII as related or exempt function revenue. Also include unrelated business revenue from a business that exploits an exempt function, such as advertising in a journal.

As discussed above, the same activity codes should be used on Part VIII, Line 2 as for Part III, Line 4. Thus, the rationale for deferring the requirement to provide activity codes is as compelling for Part VIII, Line 2 as it is for Part III, Line 4. Accordingly, we recommend that the Service amend the instructions for Part VIII, Line 2 to waive the reporting of activity codes on the 2008 Form 990.

IV. The YMCA of the USA strongly encourages the Service to defer a final decision on activity codes until Independent Sector or another appropriate charitable sector leadership organization can conduct a broadly participatory process to develop a consensus charitable sector recommendation on the structure and substance of the Form 990 activity codes.

The use of activity codes to classify related program service activities is an extremely important new feature on the Form 990. Combined with the digitization of Form 990 data, these activity codes will permit both the Service and outside analysts to perform never before possible comparative analyses of charities providing particular types of program services. Further, for persons seeking to develop a clear understanding of the program activities of a particular charity, the activity codes will be an important component of the Part III description of program service activities and the Part VIII description of program service revenues.

Whether the activity codes ultimately clarify or cloud our understanding of charities' program activities will depend entirely on whether the specific codes provide appropriate options to allow charities accurately to describe their particular program activities.

While the Service some years ago developed a set of activity codes for use on the Forms 1023 and 1024 exemption applications, charities have never been required to make this classification on the Form 990. Thus, both charities that pre-existed the Form 1023 classification requirement and those that have obtained exemption since the Service dropped this requirement – i.e., the great majority of charities in the country – have never had occasion to consider whether the existing IRS codes provide appropriate options for classifying their major program activities.

Having now carefully reviewed the existing IRS activity codes, we find that they do not provide appropriate options for classifying various important YMCA programs. For example:

- YMCA's health-focused programs for adults would be best classified as "health promotion" programs, but the existing IRS activity codes do not include this option. The closest options provided by the existing codes are: "179: Other health services," "317: Other sports or athletic activities," and "318: Other recreational activities" -- all of which are catch-all categories, and none of which accurately describe the nature of the YMCA's adult health programs.
- YMCA child care – a major program for many YMCAs – is conducted an after-school program conducted in school facilities for elementary school children. It would best be described classified as "School-age child care," or as an "After-school youth program." The closest options provided by the existing IRS codes are: "349: Other youth organization or activities," and "574: Day care centers." Again, the first of these is a non-descriptive catch-all

category, and the second suggests a stand-alone child care facility providing all-day care for pre-schoolers rather than a school-based after school program for older children and youth.

- Day camps and resident camps have also long been a major YMCA program. The existing IRS codes do not include a "youth camps" code, or even a "camping code." Thus, YMCAs would be forced to classify camping programs under "349: Other youth organization or activities," a code that would group camping programs with a broad range of quite dissimilar youth activities.

The National Center for Charitable Statistics has invested substantial time and expertise in developing two sets of classification codes: the National Taxonomy of Exempt Organizations (the NTEE codes) for classifying exempt entities, and the National Program Codes (the NPC codes) for classifying the program activities of exempt entities. (See http://nccs.urban.org/classification/index.cfm). The NTEE codes do include a code for "Young Men's or Young Women's Organizations" (P27). However, this code clearly does nothing to clarify the nature of individual YMCA programs, nor would it have any utility in identifying, for purposes of comparative analysis, other organizations that conduct the same types of programs. Further, we find that both the NTEE codes and the NPC codes fail to provide codes that describe with appropriate specificity a number of key YMCA programs.

Given the future importance of the activity codes for both the Service's oversight and the public's understanding of charities, we strongly urge the Service to allow the time for, and actively to support a broadly participatory process – led by Independent Sector, the National Center for Charitable Statistics and/or other appropriate charitable sector leadership organizations – to develop a consensus charitable sector recommendation on the structure and substance of the Form 990 activity codes.

V. The Part III explanation of program revenue should include contributions and grants as well as earned revenue.

Part III, line 4 requires organizations to provide descriptions of their three largest program service activities, including an explanation of program revenue. The proposed instructions provide the following guidance on the reporting of program revenue.

> **Revenue.** For each program service activity, report any revenue derived directly from the activity, such as fees for services or from the sale of goods that directly related to the listed activity. ... For this purpose, charitable contributions and grants (including the charitable contribution portion, if any, of membership dues) reported in line 1 of Part VIII are not considered revenues derived from program services.

The YMCA is concerned that if the explanation of program revenue does not include charitable contributions, grants, and the dollar value of volunteer services, the Form 990 will provide a very misleading picture of the resources an organization uses to support its programs. This is of great practical significance. At both the federal and state level, the

continuing discussion of whether a particular organization or activity qualifies as charitable has focused significantly on whether the entity or activity has a commercial character. This characterization is often viewed as turning largely on whether the entity or activity is funded primarily by donated support or earned income. Given the importance of this donated support/earned income distinction, we think it is very important that the Part III, line 4, explanation of program revenue include donated as well as earned support.

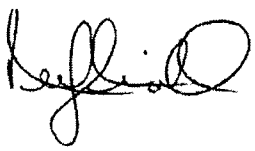
In this context, we want to emphasize the importance of including the dollar value of volunteer services as well as the value of grants and contributions. YMCA programs are supported by over 600,000 volunteers. For example, YMCA youth sports programs depend on tens of thousands of volunteer coaches, each of which devotes many hours over the course of a season to his or her coaching responsibilities. Without these volunteers, YMCAs simply could not offer youth sports programs, and any description of how YMCAs fund these programs that does not include the economic value of the volunteer coaches' work is seriously misleading.

Accordingly, we strongly urge that the Part III, Line 4 instructions be amended to make clear that an organization should report the estimated dollar value of the volunteer services involved in delivering the program.

Conclusion

As we stated above, requiring activity coding of major program activities is an important change in the Form 990. Whether this is a change for the better or for the worse will depend on the quality of the activity codes that the Service adopts. Neither the existing IRS activity codes nor the NTEE or NPC codes provide appropriate classifications for a number of major YMCA programs. We strongly suspect that the same will be true for the programs of many other charities. Further, we think it is unlikely that the Service will be able to develop an effective set of codes without thoughtful input from a broad base of charities. Accordingly, we strongly recommend that the Service allow the time, and provide active support, for a broadly participatory process – led by Independent Sector, the National Center for Charitable Statistics, and/or other appropriate charitable sector leadership organizations – to develop a consensus charitable sector recommendation on the optimum structure and content of the Form 990 activity codes.

Sincerely,



Neil J. Nicoll
President and CEO
YMCA of the USA

From: Long, Betty
To: *TE/GE-EO-F990-Revision;
Subject: Comments on Instructions and Worksheets for Schedule H
Date: Thursday, May 29, 2008 4:01:05 PM
Attachments: VHHA comment letter to IRS 6-08.doc

Attached are comments on Schedule H from the Virginia Hospital & Healthcare Association.

Betty Long
Vice President
Virginia Hospital & Healthcare Association
P.O. Box 31394
Richmond, VA 23294-1394
(804) 965-1213 phone
(804) 965-0475 fax

VIRGINIA HOSPITAL & HEALTHCARE ASSOCIATION

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May 29, 2008

By Electronic Filing

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Ave., NW.
Washington, DC 20224

RE: Comments on Draft Redesigned Schedule H

On behalf of hospitals and health systems in Virginia, thank you for the opportunity to provide comments on the draft instructions and worksheets that accompany the new Schedule H included in the revised Form 990. We also thank the Internal Revenue Service staff who participated in the American Hospital Association's (AHA) recent conference call which gave hospitals an opportunity to obtain clarification about the proposed changes and to ask additional questions.

As a general comment, the Virginia Hospital & Healthcare Association supports the comments submitted by the AHA to the IRS on May 15, 2008. We wish to add our emphasis to the key issues outlined below.

Part I, Charity Care and Certain Other Community Benefits

***Related foundations or tax-exempt organizations*.** VHHA concurs with AHA's request for clarification regarding how organizations filing Schedule H should account for community benefit activities being provided by related foundations or tax-exempt organizations. Given the variety and complexity of hospitals' organizational structures, it is important that hospitals have clear guidance regarding how to report the community benefit activities provided by such entities within their corporate structure.

Worksheet 1 – Charity Care at Cost. Line 6 of the worksheet directs hospitals to enter the amount received from an uncompensated care pool or program, but the worksheet does not provide an obvious way for hospitals to enter amounts that they contribute to such a pool or program. Virginia's Indigent Health Care Trust Fund is a public/private partnership involving the state government and private acute care hospitals in an effort to equalize the burden of charity care among hospitals. Payments from the Fund go to acute care hospitals that have provided charity care in excess of the median level of charity care costs, as provided by all acute care hospitals in the state. Funds for the program come from state appropriations and contributions from hospitals that provide charity care at levels below the median charity care costs for all hospitals. To remedy this situation, the IRS could add to line 4 (Medicaid or

provider taxes) the following language: "contributions to uncompensated care pools or programs."

Unreimbursed Medicaid. It is conceivable that, from time to time, an organization may receive prior-year Medicaid revenue that makes it appear that it incurred little or no Medicaid loss (or provided no net community benefit) in the year in which the prior-year revenue was received. To address such situations, the IRS should include provisions in its Instructions that give hospitals the option to re-state prior year results and allocate payments accordingly.

Health Professions Education. The definition of "health professions education" included in the proposed Instructions states that it "does not include education or training programs available only to the organization's employees and medical staff…" Interns and residents are considered employees of the organization, yet the costs associated with their education have been considered a legitimate component of health professions education. VHHA recommends that the IRS modify this definition to clarify that costs associated with residents and interns may be included in this category.

Subsidized Health Services. We urge the IRS to place more emphasis on the general criteria that must be met for a program to qualify as a subsidized health service, rather than suggesting that certain services (e.g. physician clinics, skilled nursing facilities and ancillary services) typically would not be considered subsidized health services. As long as a particular service 1) meets an identified community need, 2) exists in the community only because the organization offers it, 3) exists because the community's capacity to offer the program is insufficient to meet the community's need, or 4) would become the responsibility of government or some other tax-exempt entity if the organization did not offer the service it, then it seems reasonable to allow the organization to include the net cost of that service under this category.

Part II, Community Building Activities

Physician recruitment. VHHA concurs with the AHA's recommendation that the ability to include physician recruitment costs under this category be broadened to include "other circumstances where there is an identified community need for a particular type of physician."

Donations. The Instructions should clarify that donations made to support community building activities are to be included as a reportable expense.

Part III, Medicare

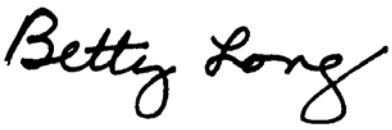
VHHA appreciates the inclusion of this section which will permit hospitals to provide information regarding their Medicare losses (or gains) and the portion of those losses that should be treated as community benefit. To increase the utility of the information provided, VHHA concurs with AHA's request that the IRS provide some guidance regarding the types of explanation or information that it would find most useful in evaluating the proposition that some portion of an organization's Medicare losses should be recognized as community benefit.

Part V, Facility Information

As proposed, the definition of facility would require large hospitals or health systems to provide information regarding each building used in its operations. The value of this level of detail to the IRS would not be commensurate with the degree of burden such a requirement will impose on the reporting organization. The IRS should limit the definition of facility as it applies to this section to "an entity that is licensed and/or certified as a hospital."

Thank you for the opportunity to comment on the draft Instructions and worksheets for Schedule H and for the IRS' responsiveness to recommendations submitted by hospitals in the previous round of public comment.

Sincerely,



Christopher S. Bailey
Senior Vice President

Betty S. Long
Vice President

From: Julie Nolan
To: *TE/GE-EO-F990-Revision;
Subject: Comments on the Form 990 Instructions
Date: Thursday, May 29, 2008 4:06:22 PM
Attachments: IRS Letter.doc

Please see attached.

Thomas C. Dolan, PhD, FACHE, CAE
President and Chief Executive Officer

AmericanCollege *of*
HealthcareExecutives
for leaders who care®

Suite 1700
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(312) 424-2800 Phone
(312) 424-0023 Fax
tdolan@ache.org

May 29, 2008

Lois G. Lerner
Director of the Exempt Organizations Division of the IRS

Ronald J. Schultz
Senior Technical Advisor to the Commissioner of TE/GE

Catherine E. Livingston
Deputy Associate Chief Counsel (Exempt Organizations)

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Ms. Lerner, Mr. Schultz, and Ms. Livingston:

The American College of Healthcare Executives is a professional membership society of more than 30,000 healthcare executives who lead hospitals, healthcare systems, and other healthcare organizations. Founded in 1933, ACHE's mission is to advance our members and healthcare management excellence.

In response to the draft instructions to the recently-revised Form 990 and accompanying schedules, we respectfully submit the comments that follow. Our primary area of concern is the expanded definition of "key employee," which, if adopted, will reach deep into our organization to include numerous lower-level management employees who do not, in reality, have the span of control intended by the new definition.

For this reason, ACHE would like to see the IRS revert to the "key employee" definition as set forth in the 2007 Form 990 instructions: "any person having responsibilities, powers or influence similar to those of officers, directors, or trustees. The term includes the chief management and administrative officials of an organization . . .[for example] a chief financial officer and the officer in charge of the administration or program operations are both key employees if they have the authority to control the organization's activities, finances, or both." ACHE would interpret this definition as appropriately excluding department heads and lower-level managers.

If the IRS is determined to expand the "key employee" definition beyond the current one, ACHE suggests raising the "control" percentage to well above 5% and formulating a tighter control standard than the "management" of revenues, assets, or expenditures. For our organization and others similar in size, to suggest that 5% is the appropriate threshold to define significant "control" or "authority" is a considerable stretch, ill-suited to accomplish the IRS' expressed intent.

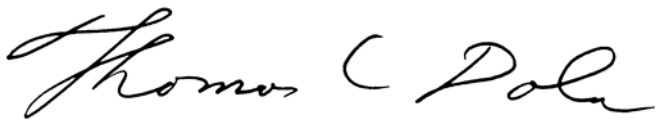
ACHE also suggests that the expanded "key employee" positions (those beyond CEO, CFO and COO) be reported by title only, not by name and title.

Furthermore, while we appreciate the establishment of the $150,000 reporting "floor" for key employees, it is our understanding that this floor applies only to Schedule J and not to the core form. Consequently, we would still be required to report numerous lower-level management positions on the core form.

Finally, we note that former key employees must be reported if their compensation was $100,000 or more. It would make more sense if the "former" key employee reporting threshold were brought up to $150,000 to agree with the current key employee reporting threshold.

We truly appreciate the IRS' efforts to modernize the Form 990 and its instructions as both a compliance and public disclosure tool. Thank you for your consideration of the issues as they impact the American College of Healthcare Executives and numerous other nonprofit organizations.

Sincerely,



Thomas C. Dolan, PhD, FACHE, CAE
President and Chief Executive Officer

From: Dan Heim
To: *TE/GE-EO-F990-Revision;
Subject: Comment on Draft Redesigned IRS 990 Instructions
Date: Thursday, May 29, 2008 4:38:57 PM
Attachments: ole0.bmp

On behalf of the New York Association of Homes and Services for the Aging (NYAHSA), I offer comments on the draft instructions to the 2008 Form 990, the annual return most of our member organizations use to report information about their operations. NYAHSA represents nearly 600 not-for-profit and public long-term care providers including nursing homes, home care agencies, assisted living providers and senior housing facilities.

For purposes of identifying organizations that must complete Schedule H, the draft Schedule H instructions define a "hospital" as "…a facility that is, or is required to be, licensed or certified in its state as a hospital, regardless of whether operated directly by the organization or indirectly through a disregarded entity or joint venture taxed as a partnership."

At issue is the reference to a state licensure requirement for purposes of defining a hospital in the context of Schedule H. New York State Public Health Law (NYS PHL) Section 2801(1) defines a "hospital" to include not only a "general hospital" (i.e., an inpatient hospital) but also to include a residential health care facility (i.e., nursing home) and other types of non-hospital facilities. NYS PHL Section 2801(10) defines a "general hospital" (i.e., inpatient hospital) as a subtype of "hospital" as follows:

> "10. "General hospital" means a hospital engaged in providing medical or medical and surgical services primarily to in-patients by or under the supervision of a physician on a twenty-four hour basis with provisions for admission or treatment of persons in need of emergency care and with an organized medical staff and nursing service, including facilities providing services relating to particular diseases, injuries, conditions or deformities. The term general hospital shall not include a residential health care facility, public health center, diagnostic center, treatment center, out-patient lodge, dispensary and laboratory or central service facility serving more than one institution."

Part V of Schedule H (and its accompanying instructions) strongly suggest that the intent is for inpatient acute care facilities, not other types of health facilities such

as nursing homes, to complete Schedule H. In the instructions, a hospital "facility" is defined to include "…a campus (or component thereof), building, structure, or other physical location or address at which the organization **provides medical or hospital care, including a hospital, outpatient facility, surgery center, urgent care clinic, or rehabilitation facility**." In addition, Part V specifically refers to various categories of hospital services including **general medical and surgical; children's hospital; teaching hospital; critical access hospital; research facility and emergency room.** These descriptors are akin to a "general hospital" as defined in NYS PHL 2801(10), not a nursing home.

To further clarify the apparent intent of the Schedule H instructions, we would suggest a reference to "inpatient hospital" pursuant to federal Medicare and Medicaid laws and regulations in lieu of or in addition to the reference to the requirement for state licensure or certification as a "hospital." If this is not possible, then we would appreciate a clarification that Schedule H does not need to be completed by not-for-profit nursing homes.

On behalf of NYAHSA and its nursing home members, thank you for the opportunity to comment on the draft instructions to the 2008 IRS Form 990. If you have any questions, please contact me at (518) 449-2707, ext. 128.

Sincerely,

Paintbrush Picture

Daniel J. Heim
Vice President for Public Policy

From: Lisa Gilden
To: *TE/GE-EO-F990-Revision;
Subject: CHA Comments on Form 990 Draft Instructions
Date: Thursday, May 29, 2008 4:48:49 PM
Attachments: CHA Comment Letter Form 990 Instructions FINALword2007.doc

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Good afternoon: Please find attached the Comments of the Catholic Health Association of the United States on the Form 990 Draft Instructions.

Please let me know if you have any difficulties opening this document.

Thank you, Lisa Gilden

Lisa J. Gilden, Esq.
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THE
CATHOLIC HEALTH
ASSOCIATION
OF THE UNITED STATES

May 29, 2008

By Electronic Filing

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
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Washington, DC 20224

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The Catholic Health Association of the United States (CHA) is pleased to submit the following comments on the Draft 2008 Form 990 Instructions. CHA is the national leadership organization representing the Catholic health care ministry in this country. Founded in 1915, CHA has over 1,950 members from all 50 states, forming the nation's largest group of nonprofit health care systems, hospitals, long-term care facilities and related organizations. CHA's member hospitals have been providing charity care and community benefit (collectively referred to as community benefit) and have been promoting the health of our communities for well over 100 years.

Our comments are focused on the following areas of the Draft Instructions: (1) Core Form, Part VI, Section A; (2) the definition of "independent member of governing body" in the Glossary; (3) Schedule H; and (4) Schedule R.

1. Core Form, Part VI, Section A

a. Line 10, Governing Body Review of Form 990

Issue

Part VI, Section A, Line 10 asks organizations whether a copy of the final Form 990 was provided to the governing body prior to filing. This was changed from the June draft which required the governing body to have reviewed the Form prior to filing. CHA believes that the change from "reviewed by" to "provided to" was a step in the right direction, as it recognizes that governing bodies may not always meet between the time that the Form 990 is finalized and when it is filed. However, the instructions as currently drafted seem to take away the flexibility that we thought the change in language in Line 10 was meant to address. In addition, the instructions would appear to create a fiduciary dilemma for members of the governing body who receive the Form 990. Once they receive it, is there a responsibility to review it before filing? As we understand it, it is not the IRS's intention to create "new law" in the area of governance through the Form 990.

Recommendation

CHA believes that the IRS should clarify that there is no requirement that the governing body take any action with respect to the Form 990 prior to filing. Further, given the realities of how boards and their committees operate, we believe that a summary provided to the board or aboard-authorized committee should also allow the organization to answer "yes" to Line 10. Accordingly, we suggest restating the instructions as follows:

> **Line 10. Governing body review of Form 990.** State "yes" to this question if a final draft of the Form 990 (or a summary thereof) was provided in paper or electronic form to each member of the organization's governing body (or an authorized committee thereof) prior to filing with the IRS. A "yes" answer does not require the governing body or authorized committee thereof to have reviewed or approved the Form 990 (or summary thereof) prior to filing with the IRS. Such review, if any, can be performed before or after the filing. A description of the process for such review (e.g., who conducted the review, when they conducted it, and the extent of the review) should be provided on Schedule O. If no review was conducted state "No review was conducted."

2. Glossary

a. Definition of "Independent Member of Governing Body"

Issue

The definition of "independent member of governing body" should be expanded to include a member of a religious order who serves on the hospital board and whose religious order sponsors the hospital and receives sponsor payments from the hospital. The current definition only includes members of religious orders who receive officer or employee compensation from the hospital. This definition should be expanded to cover non-employed members of religious orders who serve on the board without compensation, but who otherwise could be perceived to receive indirect benefit from the hospital because the religious order to which she or he belongs receives sponsorship or other similar payments from the hospital.

The definition of "independent member of governing body" lists four criteria, all of which must be satisfied for the member to be considered independent. One of those criteria is:

> 3. The member did not otherwise receive, directly or indirectly, material financial benefits from the organization. . . . In any case, a transaction with an amount greater than $50,000 is per se material.

CHA is concerned that a payment by a hospital to its sponsoring order would be deemed an indirect material benefit to any member of the order. If any such members serve on the hospital's board, they would be deemed to lack independence. CHA does not believe that this is what the IRS intended because the IRS already provided an exception for members of religious orders who receive officer or employee compensation from a sponsored hospital.

Recommendation

CHA believes this situation can be addressed by revising the second exception (that addresses members of religious orders receiving compensation) as follows:

2. The member has taken a bona fide vow of poverty and either (1) receives officer or employee compensation as an agent of a religious order or a 501(d) religious or apostolic organization ~~and has taken a bona fide vow of poverty~~, but only under circumstances in which the member does not receive taxable income (see, e.g., Rev. Ruls.77-290, 80-332); or (2) belongs to a religious order that receives sponsorship or other payments from the organization.

3. Schedule H

a. Definitions of Hospital

Issue

If the filing organization operates a facility that is licensed as a hospital under state law, the organization is required to prepare Schedule H. This, however, is inconsistent with Schedule A. Schedule A, Part I, Line 3 says that a hospital as defined under Section 170(b)(1)(A)(iii) is required to attach Schedule H. The definition of a hospital under Section 170(b)(1)(A)(iii) is much broader than the Schedule H definition and can include, as the instructions for Line 3 point out, a "rehabilitation institution or an outpatient clinic" -- facilities that are not licensed as hospitals and are not part of the Schedule H definition. The Line 3 instructions also contain the following:

> **TIP:** An organization that checks this box must also complete Schedule H, *Hospitals.*

Recommendation

Since neither the form itself nor the definition of "hospital" under 170(b)(1)(A)(iii) can be changed at this point for Schedule A, we suggest that the "tip" be revised as follows:

> **TIP:** The definition of "hospital" for Schedule A, Part I, Line 3, and the definition of "hospital" for Schedule H are not the same. The definition for Schedule H only includes facilities licensed as hospitals under state law. Thus, for example, an outpatient clinic may meet the Schedule A definition but would not meet the Schedule H definition. Organizations that check the box on Line 3 only need to fill out Schedule H if they operate a facility licensed or required to be licensed as a hospital under state law.

b. Part I, Line 3c (Other Income-Based Criteria)

Issue

Lines 3a through 3c could be interpreted as implying that the Federal Poverty Guidelines (FPGs) are the preferred benchmark for establishing qualification for financial assistance. Although Line 3c asks the organization to state if it uses other benchmarks, a member of the public reviewing the Form 990 could make the mistaken assumption that organizations that use other benchmarks are somehow not playing by the rules. While many hospitals do use FPGs, others use the HUD Very-Low Income Guidelines, and others still, state guidelines. CHA believes it was not the IRS's intent to put forth FPGs as the preferred benchmark. Thus, clarification that other benchmarks can be used is warranted.

Recommendation

CHA believes this can be addressed by adding the following language to the instructions for Part I, Line 3c:

> If applicable, describe the other income-based criteria, asset tests, or other means tests or thresholds for free or discounted care in Part VI, Question 1 of this Schedule H. While many hospitals use FPGs as an income-based criteria, some use other federal guidelines (such as the HUD Very-Low Income Guidelines), and still others use state guidelines (such as guidelines used to qualify individuals for food or housing assistance.

c. Part I, Line 7f (Health Professions Education)

Issue

Line 7f reports health professions education costs. These are calculated using Worksheet 5 or equivalent documentation. The instructions for Worksheet 5 state that if education and training is provided solely to members of the hospital's medical staff or employees, it cannot be reported on Line 7f. The instructions also state that if education and training are not restricted solely to members of the medical staff or employees, and are open to members of the public, the hospital should use a reasonable method to determine the portion of the cost attributable to members of the public and only that amount can be reported on Line 7f.

CHA believes this required tracking and allocation would be unduly burdensome and inconsistent with the IRS's stated goal of reducing the burden on filing organizations. Hospitals typically do not track who attended such events and whether or not attendees were employees or members of the professional staff. CHA believes that if the primary purpose of the education or training is to educate health professionals in the broader community (as opposed to merely internal staff), the full costs of the education or training should be includable on Line 7f, and no allocation is necessary.

In addition, the CHA framework includes promoting health careers, such as mentoring programs, in the category of health professional education. Accordingly, to be consistent with the CHA guidelines upon which the Schedule H is based, the instructions should make this clarification.

Finally, CHA notes that the current definition could be read to exclude intern, resident and fellow education and training because these persons are typically employees of the hospital and the education and training is not open to members of the public. CHA does not believe this was the IRS's intent because the instructions to Lines 1-6 of Worksheet 5 clearly indicate that costs associated with residents and fellows are includable. Accordingly, we believe this inconsistency should be clarified.

Recommendation

CHA believes that all these issues can be addressed by making the following changes to the instructions for Worksheet 5:

> It does not include <u>in-service</u> education or <u>continuing health professional education</u> training programs available only to the organization's employees and medical staff or scholarships provided to those individuals<u>; however, it does include education</u> programs, if the

primary purpose is to educate health professionals in the broader community. It also includes activities promoting health careers, such as mentoring programs. It also includes education and training programs for interns, residents and fellows even though such persons are generally employed by the organization. ~~If education and training is not restricted to the organization's employees and medical staff, use a reasonable allocation to report only the expenses related to providing the education or training to persons who are not employees of the organization or not on the organization's medical staff.~~

Example 1: Organization provides continuing education every other Tuesday at 7:00 a.m. This time is chosen to allow physicians on the medical staff to participate before they conduct their morning rounds. This program is intended solely for internal use and is not advertised to the public. No one other than members of the Organization's medical staff attend. This program does not count as health professions education.

Example 2: Organization operates the only advanced burn unit in a two-state area. Organization hosts an annual day-long institute in which it provides training to physicians from throughout the two-state area to teach them about burn care techniques that can be used in local emergency departments. This program counts in total as health professions education because the primary purpose is to educate health professionals in the broader community, even if members of the organization's medical staff attend.

d. Part I, Line 7g (Subsidized Health Services)

Issue

Line 7g reports subsidized health services. The amounts are calculated using Worksheet 6 or equivalent documentation. The instructions to Worksheet 6 state:

> Subsidized health services generally exclude ancillary services (that support inpatient and ambulatory programs), such as anesthesiology, radiology, laboratory departments, physician clinic services, and skilled nursing facilities.

CHA is not clear why the IRS generally excluded physician clinic services and skilled nursing services as subsidized health services. We see no reason why these should be excluded where, in fact, they are operated at a loss, meet a documented community need, improve access to care, or enhance public health. Many hospitals have satellite physician clinics that serve at-risk or underserved populations (e.g., free health clinics or pediatric clinics).

Many hospitals also offer skilled nursing facilities that serve persons who would otherwise have difficulty receiving access to appropriate health services. For some critical access hospitals, skilled nursing units can represent more than one-half of total bed capacity. As long as physician clinic and skilled nursing services meet the subsidized health service requirements stated in the instructions to Worksheet 6, then the organization should be able to report it on Line 7g (e.g., the service meets an identified community need and if the organization did not offer the service, it would not be available in the community, the community's capacity to provide the service would be below the community's need, or the service would become the responsibility of a government entity or another tax-exempt organization).

Recommendation

CHA believes this can be addressed by revising the instructions to Worksheet 6 to read as follows:

> Subsidized health services generally exclude ancillary services (that support inpatient and ambulatory programs), such as anesthesiology, radiology, and laboratory departments~~. physician clinic services, and skilled nursing facilities~~.
>
> Due to the nature of subsidized health services, some types of services may or may not qualify based on whether they meet the definition. For example, physician services and skilled nursing facilities may or may not qualify as a subsidized health service depending on whether (1) the service meets an identified community need (as defined in the instructions to Worksheet 4) and (2) if the organization ceased providing the service, it would be unavailable in the community, the community's capacity to provide the service would be below the community's need for the service, or the service would become the responsibility of government or another tax-exempt organization.
>
> Example 1: Organization employs a group of physicians who are board-certified in Specialty X. Many other hospitals in the Organization's service area employ physicians who are board-certified in Specialty X. If the organization did not employ the specialists, Specialty X would still be widely available in the community. Because the service does not meet an identified community need, this is not a subsidized health service.
>
> Example 2: Organization is a critical access hospital operating in a federally-designated "Health Professional Shortage Area." Given the market conditions, no specialist who is board-certified in Specialty X (the same specialty described in Example 1) will locate in the community. Organization employs a specialist who is board-certified

in Specialty X on a full-time basis to provide continuous services to the community. Because the Organization loses money on the specialist, and because Specialty X would not otherwise be available if the specialist were not employed by the Organization, this counts in total as a subsidized health service, even if members of the hospital's medical staff also attend.

e. Part I, Line 7h (Research Costs)

Issue

Line 7h reports research costs. Research costs are calculated using Worksheet 7. The instructions for Worksheet 7 define research as "any study or investigation that receives funding from a tax-exempt or government entity . . . ." CHA believes that it was the IRS's intent to allow organizations that use their own funds for research to include these costs as community benefit expenses.

Recommendation

CHA believes this can be clarified by revising the instruction in Worksheet 6 to read as follows:

> "Research" means any study or investigation that receives funding from a tax-exempt entity (including the organization) or government entity of which the goal is generalizable knowledge that is made available to the public . . . .

f. Part I, Line 7i (Cash and In-Kind Contributions)

Issue

Line 7i reports cash and in-kind contributions. These costs are calculated using Worksheet 8. The instructions to Worksheet 8 read as follows:

> Do not include any contributions that were funded in whole or in part by a restricted grant, to the extent that such grant was funded by a related organization.

CHA believes that this instruction is confusing because it involves both grants received and grants made and it is not clear to which the word "contributions" is referring. Further, even with some clarification, there are potential grants that could legitimately be reported that would be excluded by this definition.

CHA supports the IRS in its endeavor to craft such anti-abuse or anti-churning language. If Hospital A grants to Hospital B, and Hospital B grants to Hospital C, and Hospital C grants the same funds back to Hospital A, it would clearly be improper for all the hospitals to report the grants as community benefit expense on Line 7i. But this anti-abuse/anti-churning policy is only implied in the instructions and should be clearly stated. Further, there are situations where one entity makes a grant to another related entity and that entity grants to a third related entity, but only one entity among the three files a Schedule H. It is not unreasonable in these situations for the entity filing the Schedule H to want to report the contribution made. Finally, cash is fungible so it is not always clear if a grant received is being re-granted, or if other funds are being used to make the grant.

Recommendation

Instead of trying to draft specific language to target a specific situation, CHA believes that a broad policy statement is better. It would be more applicable to a broader range of potentially abusive transactions but would not be applicable to situations that are not abusive. CHA recommends that the current instruction language (quoted previously) be deleted and replaced with the following:

> Groups of related organizations are not allowed to count the same granted funds as community benefit expense. For example, if Hospital A grants to related Hospital B, and Hospital B grants to related Hospital C, and Hospital C grants the same funds back to Hospital A, then it is clearly impermissible for any of these related hospitals to report community benefit expense associated with such grants on Line 7i. However, if grants are made among related organizations for legitimate purposes, the organizations can exercise some flexibility to determine who reports the grant as community benefit expense, provided that care is taken to avoid double counting. For example, if a foundation (or a hospital system parent) makes a grant to a related hospital for charity care, and the hospital grants those funds to a related outpatient clinic that provides free and discounted care in rural areas, it is permissible for the hospital to report the grant on Line 7i of its Schedule H because neither the foundation (or hospital system parent) nor the outpatient clinic would file a Schedule H and the community benefit would go unreported if the hospital did not report it.

g. Part II, Line 4 (Environmental Improvements)

Issue and Recommendation

The definition includes portions of the CHA definition of environmental improvements, but not the entire definition. CHA believes the definition of environmental improvements should be expanded to read as follows: "This also includes health care facility environmental activities, such as waste and mercury reduction, green purchasing and other ecology initiatives."

h. Part III, Section C, Line 9(b) (Collection Practices)

Issue

Part III, Section C, Line 9(b) asks whether "an organization's collection policy contains provisions on the collection practices to be followed for patients who are known to qualify for charity care or financial assistance." (Emphasis added.)

However, the instructions for Line 9(b) do not track the language of the question on Line 9(b) at all. First, the instructions broaden the question to cover all patients, not just those who qualify for charity care or financial assistance. Then, contrary to the question itself, the instructions state that the question covers "those who would likely qualify" as opposed to the question's wording of "those who are known to qualify".

Recommendation

CHA believes this can be addressed by revising the instruction in Line 9(b) to read as follows:

Answer "yes" if the organization's written debt collection policy contains provisions for collecting amounts due from patients, including those patients the organization knows would qualify for charity care or financial assistance. For example, if the policy states that the organization will not commence a collection action against any patient without prior internal review, then the organization may answer "yes" to this question.

i. Part V (Facilities)

Issue

The instructions define the term "facility" for purposes of reporting on Part V as follows:

> A facility is defined for Part V to include . . . a building, structure or other physical location or address, at which the organization provides medical or hospital care.

A hospital may provide medical care by doing free health screenings at every shopping mall in the community, doing free dental exams at every elementary school in the community, and using a mobile mammography unit to provide free screenings at numerous locations throughout the community. On its face, the instructions require the hospital to report the address of every mall, elementary school and parking stop of the mobile mammography. This definition is overly broad and contrary to the language of Part V of the Form itself, which contains checkboxes that pertain only to types of hospitals. It also increases the administrative burden on reporting organizations without providing any useful information to the IRS or to the general public reviewing the form.

Recommendation

CHA strongly believes there should be an easily-administrable, bright-line test for those facilities that need to be reported on a location-by-location basis in Part V. CHA recommends that organizations be required to report any health care facility that is required to be licensed under applicable state law. This would require reporting every hospital facility and would generally require reporting of other facilities such as ambulatory surgery centers, rehabilitation hospitals, skilled nursing facilities, diagnostic centers, and in many states free-standing laboratories and pharmacies. Accordingly, CHA suggests the following revisions to the instructions:

> Any health care facility whose information is reported or included elsewhere in Schedule H must be separately listed in Part V. A facility is defined for Part V <u>as any facility required to be</u> licensed as a health care provider by state law. Depending on state law this could include (in addition to hospitals<u>) ambulatory surgery centers, skilled nursing facilities, laboratories, pharmacies, diagnostic testing facilities, and any other facility requiring a license as a health care provider under state law</u>. [Delete remainder of paragraph.]

4. Schedule R

a. Page 4 (Group Exemptions)

Issue and Recommendation

The instructions are clear that members of a group exemption do not have to list any other subordinate members of the group in Part II. What is not clear, however, is to what extent related organizations of subordinate members need to be reported on the Schedule R for the central organization or the Schedule R for the consolidated return for subordinate members. CHA believes that what is implied, but what is not clear, is that related organizations of subordinate organizations would not have to be reported on any Schedule R because the instructions only require subordinate organizations filing an individual Schedule R to report its central organization and only require the central organization to report members of the group in response for the core Form 990, page 1, Line H(b). CHA believes the IRS should clarify that this is the reporting expectation.

In addition, the instructions make it clear that a member of a group ruling filing a separate return is not required to list any of the other group ruling subordinate organizations in Part II (which governs related exempt organizations). However, IRS makes no mention of how a subordinate in a group ruling that files its own returns handles partnerships, corporations and trusts that are owned / controlled directly by other subordinates.

As the IRS may imagine, many members of group rulings have for-profit subsidiaries. As a result of the attribution rules, ownership of a for-profit subsidiary of one subordinate in a group ruling can be attributed to most other subordinate members of the group ruling. Thus, in a group ruling such as the Catholic Church, a subordinate entity that files its own return would likely be required to list all of the for-profit subsidiaries of all of the other tax-exempt organizations that are listed in the Official Catholic Directory. This cannot be what IRS intends. We recommend that the IRS change the language of Schedule R to require members of a group ruling filing a separate return to disclose only those organizations over which they have direct control.

b. Page 4, Instructions, Schedule R (Indirect Control)

Issue and Recommendation

The instructions on Page 4 of the Instructions to Schedule R say that control can be indirect. For example, if the organization controls Hospital A, and Hospital A controls Hospital B, then the organization indirectly controls Hospital B. In other parts of the Form 990 and instructions, control with

respect to the filing organization often refers to several types of relationships: the organization controls another, the organization is controlled by another, or the organization is under common control with another. CHA believes that the definition of indirect control is only referring to one entity controlling another, who in turn controls a third party, but that nowhere in the chain does common control or control by another factor in. For example, the following examples explain our concern:

> Example 1: If the organization and another nonprofit each own 50% of a joint venture (not meeting the definition of control) but both entities are managing partners (which meets the definition of control), then the hospital controls the joint venture and the joint venture is controlled by the other nonprofit. Is the other, unrelated nonprofit an indirectly-controlled entity such that the reporting organization has to include information about the other nonprofit?
>
> Example 2: If the organization is in a joint venture with a for-profit, and hospital owns more than 50% (meeting the definition of control) and the for-profit is the managing partner (also meeting the definition of control), then the organization controls the joint venture and the joint venture is controlled by the for-profit. Is the for-profit a related entity such that the reporting organization has to include information about the other for-profit?

In both examples, CHA believes that the reporting organization should not have to report any information about the nonprofit or for-profit joint venture partners, but CHA believes the IRS should clarify this.

c. Parts III and IV (Disproportionate Allocations)

Issue and Recommendation

The instructions use the term "disproportionate allocations" as being those allocations or distributions that differ from the organization's investment. The partnership regulations, however, talk about allocations that have "economic substance." CHA believes that the instructions dealing with disproportionate allocations should be tied to or reference the treasury regulations on economic substance. In other words, organizations would have to report distributions and allocations that lack economic substance rather than ones that are disproportionate (as disproportionate allocations can have economic substance under the regulations).

d. Parts III and IV (Share of Income and Assets)

Issue

In both Parts III and IV, the organization is supposed to report the share of income of the related entity. With a simple example, that sounds easy. For example, if the organization is a 80% member in an LLC that is a 80% partner in a partnership (both of whom are taxed as partnerships), then presumably the organization would report a 64% share of the partnership's income and assets (80% of 80%=64%).

However, it gets more complicated moving down multiple generations of the corporate family tree and when different types of organizations are involved. If the hospital owns a 75% stake in a for-profit corporation (the other 25% of which is owned by an unrelated nonprofit hospital), and the for-profit corporation owns 100% of the preferred membership interests in an LLC (giving it certain preferred distribution rights) and 100% of the common membership interests are owned by physicians (giving them distribution rights only when the for-profit corporation has received all of its distributions and only once certain income thresholds are met), then what is the reporting organization supposed to report on Schedule R as its share of income and assets of the LLC?

Recommendation

CHA believes that in Part III, reporting the share of income and assets (columns (f) and (g)) should only be required when all entities in the ownership chain past the reporting organization are entities taxed as partnerships (the simple example above). For Part IV, reporting the share of income and assets (columns (f) and (g)) should only be required when the reporting organization is the direct shareholder in the related corporation and there is only a single class of stock (with no differences among stockholders with respect to voting, dividends, liquidation distributions or other rights). The instructions should also clarify that stock ownership should be multiplied against income and assets of the corporation with stock ownership, income and assets all being measured as of the last day of the tax year that ends during (or co-terminus with) the reporting organization's tax year.

e. Part IV (Trusts)

Issue

Included in the definition of control on Page 4 of the Instructions to Schedule R is an organization that has ownership of more than a 50% beneficial interest in a trust. On its face, this would include an organization that is the beneficiary of a decedent's trust or estate as well as organizations

that are beneficiaries of charitable lead trusts and charitable remainder trusts. With such donative instruments, the reporting organization may not know whom the other beneficiaries are and/or whether the organization has a 50% beneficial interest. Moreover, these entities (especially decedent's estates and trusts) generally are in existence for only a short period and reporting them on the Schedule R would provide no useful information.

The IRS would clearly want to know about organizations that are permanent or perpetual trusts (as opposed to decedent's trusts and estates) that are supporting organizations of the reporting organization, and this should be reported. However, some of these might escape the 50% beneficial interest rule and not meet another definition of control and therefore not get reported.

So, under this definition some entities (decedent's trusts and estates) are getting reported that should not be, and some organizations are not getting reported that should be (certain trusts that are supporting organizations).

Recommendation

CHA believes that the "more than 50% beneficial interest in a trust" should be deleted as a factor establishing "control" and replaced with the following:

> The organization is a supporting organization of or supported organization of another entity (within the meaning of Section 509(a)(3)). This does not include decedent's estates or trusts, or charitable lead or charitable remainder trusts.

* * * *

CHA appreciates the IRS's continued effort to solicit input from the public on the Instructions to the Form 990. Please contact me at (202) 721-6319 if you have any questions.

Sincerely,

Lisa J. Gilden
Vice President, General Counsel

From: Schultz, Beth
To: *TE/GE-EO-F990-Revision;
Subject: Comments on Form 990 Draft Instructions
Date: Thursday, May 29, 2008 6:16:08 PM
Attachments: Comment Letter - IRS Form 990 Instructions.pdf

<<Comment Letter - IRS Form 990 Instructions.pdf>>

Beth Schultz
System Manager, Regulatory Affairs
Providence Health & Services

May 29, 2008

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Ave., NW
Washington, D.C. 20224

RE: Draft 2008 Form 990 Instructions

On behalf of Providence Health & Services (Providence), I want to thank you for the opportunity to provide our comments to the Internal Revenue Service (IRS or Agency) on the Draft 2008 Form 990 Instructions. The IRS released the instructions on April 7, 2008.

Providence is a faith-based, non-profit health system that includes 26 hospitals, more than 34 non-acute facilities, physician clinics, a health plan, a liberal arts university, a high school, approximately 50,000 employees and numerous other health, housing and educational services in Alaska, Washington, Montana, Oregon, and California. As a Catholic health care system striving to meet the health needs of people as they journey through life, Providence is pleased to submit comments on several areas related to the Draft 2008 Form 990 Instructions.

Joint Ventures Taxed as a Partnership

On page 18 of 29 of the Draft 2008 Form 990 Instructions Appendix, the IRS requires that an organization, in general, must report the activities of the joint ventures as its own activities, to the extent of the organization's profits or capital interest in the joint venture, whichever is greater. Also included in the draft instructions is a list of areas on the Form and Schedules where this reporting of activities of a joint venture is required. While Providence recognizes that such detailed reporting will lead to increased transparency, a concept we support, we are greatly concerned that there is insufficient time to put adequate systems in place to capture this detailed information from our joint ventures to ensure accurate reporting. While some of the information required is provided to Providence by a joint venture on Form 1065 K-1, much of the data is not and will require the negotiation and implementation of new systems and/or processes.

> **Recommendation:** Providence strongly urges the IRS to delay for one year the requirements to include the activities of an organization's joint ventures with the reporting of its own activities.

Highlights

The IRS has included a "Highlights" section at the beginning of the instructions for each Form and Schedule. This information, used to clearly identify the areas the Agency is

specifically seeking comment, is helpful in the draft format but should be removed prior to the finalization of the 2008 Form 990 Instructions.

> **Recommendation:** Providence suggests that the IRS remove all "Highlights" sections from the final instructions for brevity and clarity.

Glossary

Included in the instructions is a very thorough Glossary of terms used throughout the Form, Schedules, and Instructions. This Glossary is a helpful tool and we praise the IRS for creating this document. However, throughout the specific instructions related to several Schedules, definitions are included that are duplicative of those contained in the Glossary.

> **Recommendation:** Providence suggests that the IRS remove all definitions from the specific instructions related to the Schedules and only include definitions in the Glossary.

Core Form

Part VI, Line 10

The wording of this line item denotes a negative connotation if an organization cannot answer "Yes" that a copy of the Form 990 was provided to the organization's governing body prior to being filed. However, an organization is required to explain the process, if any, by which any of the organization's officers, directors, trustees, board committee members, or management reviewed the Form 990, whether before or after it was filed with the IRS. Providence feels that the initial question in Line 10 should ask whether a copy of the Form 990 was provided to the organization's governing body, *regardless* of whether it was before or after the form was filed. Then, an organization would be required to explain the review process that occurred in Schedule O.

> **Recommendation:** Providence strongly urges the IRS to reword Line 10 and the instructions for completion of this line item to answer "Yes" if a copy of the organization's final Form 990 (including required schedules) was provided to each voting member of the organization's governing body, whether before or after the form was filed with the IRS. If an organization answers "Yes" to this line item, the process of review is to be explained in Schedule O.

Part II, Signature Block

The instructions for Part II state that an "officer" of the organization authorized to sign it must sign the document. The Glossary states, under the definition of "officer" that "For purposes of Form 990 reporting, treat the organization's top management official as an officer." We are asking for clarification from the IRS on the meaning of "officer" specifically related to Foundation Executive Directors. In the past, while attending IRS seminars, statements were made by conference speakers that if a Foundation Executive Director was not elected to their position, then that individual was ineligible to sign the Form 990. However, under the definition of "officer" contained in the Glossary, a Foundation Executive Director (the top management official) can be treated as an officer.

Recommendation: Providence urges the Agency to clarify that "officer" for purposes of signing the Form 990 would include a Foundation Executive Director, whether or not that individual was elected to their position.

Part IV, Lines 4, 5, and 25a

For three line items in Part IV, only certain organizations are required to complete the question and other organizations are instructed to "leave this line blank." In order to promote clarity and prevent the appearance of having an incomplete return, the form should allow an organization to indicate "N/A" or "Not Applicable" for Lines 4, 5, and 25a.

Recommendation: Providence urges the IRS to allow an organization to complete Lines 4, 5, and 25a with a response of "N/A" or "Not Applicable" to avoid the return as being construed as an incomplete filing resulting in possible penalties to the organization.

Part IV, Line 12

The instructions for Line 12 only allow an organization to answer "Yes" if the audited financial statement is prepared in accordance with generally accepted accounting principles (GAAP). In some circumstances, such as for HUD Housing, other regulatory audit requirements apply rather than GAAP – specifically, government auditing standards – and the audited financial statement is not presented in GAAP format. An organization will likely have a negative connotation applied against it when it is prohibited from answering this line item with "Yes" even though their audited financial statement met applicable regulatory audit requirements.

Recommendation: Providence urges the IRS to allow an organization to answer "Yes" to Part IV, Line 12, when the audited financial statement is prepared in accordance with GAAP or any other applicable regulatory audit requirements.

Part VI, Line 2

Both the instructions specific to the Core Form as well as the Glossary identically define the term "family relationship." However, the definition does not include same-sex domestic partnerships.

Recommendation: Providence suggests that the Agency include same-sex domestic partnerships within the definition of "family relationship."

Part VII, Section A Overview

The instructions for Section A indicate that an organization must list key employees whose reportable compensation exceeds $150,000. On the form, the guidance given above the table states "List all of the organization's **current** officers, directors, trustees (whether individuals or organizations) and key employees regardless of amount of compensation." However, the threshold for listing **former** key employees is $100,000 of reportable compensation.

Recommendation: Providence suggests that the IRS maintain the same threshold of reportable compensation for key employee purposes and recommend that this threshold be set at $100,000.

Part VIII, Line 11 (Caution)
According to the instructions, an organization must enter a corresponding business code from the *Codes for Unrelated Business Activity* for each amount entered on lines 11a, b, and c. Similar to the "Tip" for Column (A) where an organization should use 900099, we believe an organization should also be instructed to use 900099 when none of the listed codes from the *Codes for Unrelated Business Activity* accurately describe the activity.

Recommendation: Providence urges the Agency to add the sentence: "If none of the listed codes accurately describe the activity, enter 900099" to the Caution remark following the instructions for Line 11.

Part IX, Line 13
The instructions state that printing costs relating to conferences or conventions should be excluded from the Office Expenses line and instead be included on Line 19 for Conferences, Conventions, and Meetings. Providence feels it is unduly burdensome and largely impractical to separate printing costs in this manner. Many printing expenses may cover materials that in part are used for conferences or conventions but are also disseminated to the general public. Thus, printing expenses are not easily identified as being specific to conferences or conventions as opposed to general printing expenses.

Recommendation: Providence urges the IRS to remove the last sentence from the instructions for Line 13 in Part IX related to reporting printing costs for conferences or conventions on Line 19 and instead require that all printing costs (regardless of their nature) are reported on Line 13 under Office Expenses. This would also necessitate a change in the instructions for Line 19 to remove the reference to "printed materials."

Part IX, Line 16
The IRS has included a requirement that property insurance be reported on Line 16 under Occupancy rather than on Line 23 under Insurance. For sake of clarity, Providence feels this item should be reported on the line item specific to insurance, rather than the line item related to occupancy.

Recommendation: Providence suggests that the IRS remove the requirement to report property insurance on Line 16 and instead include this figure on Line 23. This would also necessitate a change in the instructions for Line 23 to remove the last two sentences relating to reporting property insurance on Line 16.

Also in the instructions for Line 16, the Agency has indicated that mortgage interest should be reported under this line item rather than Line 20 under Interest. In order

to have Form 990 be as clear as possible, we feel that mortgage interest should be reported as "Interest" rather than "Occupancy."

> **Recommendation:** Providence suggests that the IRS remove the requirement to report mortgage interest on Line 16 and instead include this figure on Line 20. This would also necessitate a change in the instructions for Line 20 to remove the reference to reporting mortgage interest on Line 16.

Schedule A

Part II and Part III Public and Total Support Tables

In previous years, organizations were required to report the information contained in the public and total support tables on a cash basis regardless of whether a cash or an accrual basis accounting methodology was used. Now, the instructions require that an organization use the same method of accounting on Schedule A that it uses on the rest of Form 990 (as identified in Part XI, Line 1 of the Core Form). It is not clear from the instructions whether an organization will need to go back and refigure one or more prior years' information to "match" the accounting methodology used for the current year since multiple years are reported on the tables. Providence feels that it may be misleading to have some year's data reported on a cash basis while in other years the data is calculated on an accrual basis all within the same table; however, recalculating prior years' information will represent a significant burden.

> **Recommendation:** Providence urges the IRS to clarify whether prior years' data will need to be recalculated to "match" the accounting methodology used for the current year. If different methodologies are allowed for reporting different year's data, we recommend that the Agency include a space for the organization to note which accounting method was used during each year on the tables in Part II and Part III.

Part II, Line 9 and Part III, Line 11

Included both on the Schedule itself, as well as in the instructions for Lines 9 and 11, the IRS includes the phrase "whether or not the business is regularly carried on" when referring to net income from unrelated business activities. Providence is seeking clarification from the IRS on this issue because the very definition of unrelated business income found in section 513 (to which both the Glossary and the Schedule A instructions refer) is in direct contradiction to this phrase. In order to be considered unrelated business income, the business *must* be regularly carried on and thus, the instructions and Lines 9 and 11 are in opposition to the definition found in section 513.

> **Recommendation:** Providence urges the IRS to remove the phrase "whether or not the business is regularly carried on" from the instructions for Schedule A, as well as from the face of the schedule on Lines 9 and 11.

Schedule G

The instructions for Schedule G include requirements to report raffles as gaming activities. Providence contends that raffles that occur as part of a larger fund-raising event are "embedded raffles" as opposed to those raffle activities that occur as a

"stand-alone raffle" event. We are seeking clarification from the Agency that only "stand-alone raffles" need to be reported on Schedule G as gaming activities.

Recommendation: Providence strongly urges the Agency to use the terms "embedded raffles" and "stand-alone raffles" to distinguish the types of raffle activities that must be reported on Schedule G as gaming activities. We urge the IRS to adopt clear, concise definitions of these terms and include the definitions in the Glossary.

Schedule H

Part I, Community Benefit Table and Part II, Community Building Activities Table

Schedule H is to be completed only by licensed hospitals. Thus, a large health system, such as Providence, may have a Core Form that includes several hospitals, home health agencies, skilled nursing facilities and other health care entities but the Schedule H includes only information on the licensed hospitals. We are concerned that the public may try to compare the figures represented on Schedule H to the total revenue and total expenses reported on the Core Form which may cause confusion and misrepresent the community benefit and community building activities provided by the organization. Because the community benefit and community building from facilities other than licensed hospitals will not appear on Schedule H, but these facilities will be part of the calculation of total revenue and expenses on the Core Form, a member of the public may inadvertently conclude that the level of community benefit and community building provided by an organization is relatively small. Providence feels that the community benefit table and the community building table should include lines that clearly identify the total expenses and revenues from the licensed hospitals included as part of Schedule H.

Recommendation: Providence strongly urges the IRS to add line items for total expenses and total revenues for the facilities included in the Community Benefit and Community Building tables to Schedule H. This change would require that the instructions be altered to include directions for an organization to calculate the total expenses and revenues for those licensed hospitals that are being reported on Schedule H and not include any other facility that is part of the organization.

Part I, Line 3a

The instructions allow only the use of the Federal Poverty Guidelines established by the Department of Health and Human Services in order for an organization to answer this question in the affirmative. Providence feels that the use of other, accepted guidelines, such as the HUD Very-Low Income Guidelines should be an acceptable alternative to the Federal Poverty Guidelines and use of these accepted guidelines should allow an organization to answer Line 3a in the affirmative.

Recommendation: Providence urges the IRS to include the HUD Very-Low Income Guidelines as an acceptable alternative to the Federal Poverty Guidelines in the instructions for Line 3a.

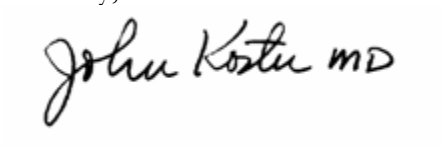
Part I, Line 7f

The instructions related to calculating the net cost of health professions education state that if the education and training is not restricted to the organization's employees and medical staff, a reasonable allocation to report only the expenses related to providing the education or training to persons who are not employees of the organization or not on the organization's medical staff should be used. Providence feels this allocation requirement is burdensome and unnecessary.

> **Recommendation:** Providence urges the IRS to allow all expenses related to the education program if that program is determined to be community benefit and an organization would not be required to back out costs of their internal attendees.

Thank you for the opportunity to review and comment on the draft 2008 Form 990 Instructions. Please contact Beth Schultz, System Manager, Regulatory Affairs, via e-mail at Elizabeth.Schultz@providence.org or via phone at (206) 464-4738 if you have questions about any of the material in this letter.

Sincerely,



John Koster, M.D.
President/Chief Executive Officer
Providence Health & Services